

## DIGITAL MARKETS ACT

Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on Contestable and Fair markets in the Digital Sector [2022] O.J. (L. 265)

### ***art. 1 – Subject matter and scope***

1. The purpose of this Regulation is to contribute to the proper functioning of the internal market by laying down harmonised rules ensuring for all businesses, contestable and fair markets in the digital sector across the Union where gatekeepers are present, to the benefit of business users and end users.
2. This Regulation shall apply to core platform services provided or offered by gatekeepers to business users established in the Union or end users established or located in the Union, irrespective of the place of establishment or residence of the gatekeepers and irrespective of the law otherwise applicable to the provision of service. ...
3. This Regulation shall not apply to markets related to [physical telecommunications networks or Internet access].

### ***art. 2 – Definitions***

For the purposes of this Regulation, the following definitions apply:

- (1) ‘gatekeeper’ means an undertaking providing core platform services, designated pursuant to Article 3;
- (2) ‘core platform service’ means any of the following:
  - (a) online intermediation services;
  - (b) online search engines;
  - (c) online social networking services;
  - (d) video-sharing platform services;
  - (e) number-independent interpersonal communications services;
  - (f) operating systems;
  - (g) web browsers;
  - (h) virtual assistants;
  - (i) cloud computing services;
  - (j) online advertising services, including any advertising networks, advertising exchanges and any other advertising intermediation services, provided by an undertaking that provides any of the core platform services listed in points (a) to (i); ...
- (27) ‘undertaking’ means an entity engaged in an economic activity, regardless of its legal status and the way in which it is financed, including all linked enterprises or connected undertakings that form a group through the direct or indirect control of an enterprise or undertaking by another; ...
- (29) ‘interoperability’ means the ability to exchange information and mutually use the information which has been exchanged through interfaces or other solutions, so that all elements of hardware or software work with other hardware and software and with users in all the ways in which they are intended to function;

### ***art. 3 – Designation of gatekeepers***

- (1) An undertaking shall be designated as a gatekeeper if:

- (a) it has a significant impact on the internal market;
  - (b) it provides a core platform service which is an important gateway for business users to reach end users; and
  - (c) it enjoys an entrenched and durable position, in its operations, or it is foreseeable that it will enjoy such a position in the near future.
- (2) An undertaking shall be presumed to satisfy the respective requirements in paragraph 1:
- (a) as regards paragraph 1, point (a), where it achieves an annual Union turnover equal to or above EUR 7,5 billion in each of the last three financial years, or where its average market capitalisation or its equivalent fair market value amounted to at least EUR 75 billion in the last financial year, and it provides the same core platform service in at least three Member States;
  - (b) as regards paragraph 1, point (b), where it provides a core platform service that in the last financial year has at least 45 million monthly active end users established or located in the Union and at least 10,000 yearly active business users established in the Union, identified and calculated in accordance with the methodology and indicators set out in the Annex;
  - (c) as regards paragraph 1, point (c), where the thresholds in point (b) of this paragraph were met in each of the last three financial years. ...
- (8) The Commission shall designate as a gatekeeper, in accordance with the procedure laid down in Article 17, any undertaking providing core platform services that meets each of the requirements of paragraph 1 of this Article, but does not satisfy each of the thresholds in paragraph 2 of this Article.

For that purpose, the Commission shall take into account some or all of the following elements, insofar as they are relevant for the undertaking providing core platform services under consideration:

- (a) the size, including turnover and market capitalisation, operations and position of that undertaking;
- (b) the number of business users using the core platform service to reach end users and the number of end users;
- (c) network effects and data driven advantages, in particular in relation to that undertaking's access to, and collection of, personal data and non-personal data or analytics capabilities;
- (d) any scale and scope effects from which the undertaking benefits, including with regard to data, and, where relevant, to its activities outside the Union;
- (e) business user or end user lock-in, including switching costs and behavioural bias reducing the ability of business users and end users to switch or multi-home;
- (f) a conglomerate corporate structure or vertical integration of that undertaking, for instance enabling that undertaking to cross subsidise, to combine data from different sources or to leverage its position; or
- (g) other structural business or service characteristics.

In carrying out its assessment under this paragraph, the Commission shall take into account foreseeable developments in relation to the elements listed

- in the second subparagraph, including any planned concentrations involving another undertaking providing core platform services or providing any other services in the digital sector or enabling the collection of data. ...
- (9) For each undertaking designated as a gatekeeper pursuant to paragraph 4 or 8, the Commission shall list in the designation decision the relevant core platform services that are provided within that undertaking and which individually are an important gateway for business users to reach end users as referred to in paragraph 1, point (b).
- (10) The gatekeeper shall comply with the obligations laid down in Articles 5, 6 and 7 within 6 months after a core platform service has been listed in the designation decision pursuant to paragraph 9 of this Article. ...

***art. 5 – Obligations for gatekeepers***

- (1) The gatekeeper shall comply with all obligations set out in this Article with respect to each of its core platform services listed in the designation decision pursuant to Article 3(9). ...
- (3) The gatekeeper shall not prevent business users from offering the same products or services to end users through third-party online intermediation services or through their own direct online sales channel at prices or conditions that are different from those offered through the online intermediation services of the gatekeeper.
- (4) The gatekeeper shall allow business users, free of charge, to communicate and promote offers, including under different conditions, to end users acquired via its core platform service or through other channels, and to conclude contracts with those end users, regardless of whether, for that purpose, they use the core platform services of the gatekeeper.
- (5) The gatekeeper shall allow end users to access and use, through its core platform services, content, subscriptions, features or other items, by using the software application of a business user, including where those end users acquired such items from the relevant business user without using the core platform services of the gatekeeper. ...
- (7) The gatekeeper shall not require end users to use, or business users to use, to offer, or to interoperate with, an identification service, a web browser engine or a payment service, or technical services that support the provision of payment services, such as payment systems for in-app purchases, of that gatekeeper in the context of services provided by the business users using that gatekeeper's core platform services.
- (8) The gatekeeper shall not require business users or end users to subscribe to, or register with, any further core platform services listed in the designation decision pursuant to Article 3(9) or which meet the thresholds in Article 3(2), point (b), as a condition for being able to use, access, sign up for or registering with any of that gatekeeper's core platform services listed pursuant to that Article. ...

***Article 6 – Obligations for gatekeepers susceptible of being further specified under Article 8 ...***

- (2) The gatekeeper shall not use, in competition with business users, any data that is not publicly available that is generated or provided by those business users in the context of their use of the relevant core platform services or of the services provided together with, or in support of, the relevant core plat-

form services, including data generated or provided by the customers of those business users. ...

- (3) The gatekeeper shall allow and technically enable end users to easily un-install any software applications on the operating system of the gatekeeper, without prejudice to the possibility for that gatekeeper to restrict such un-installation in relation to software applications that are essential for the functioning of the operating system or of the device and which cannot technically be offered on a standalone basis by third parties.

The gatekeeper shall allow and technically enable end users to easily change default settings on the operating system, virtual assistant and web browser of the gatekeeper that direct or steer end users to products or services provided by the gatekeeper. That includes prompting end users, at the moment of the end users' first use of an online search engine, virtual assistant or web browser of the gatekeeper listed in the designation decision pursuant to Article 3(9), to choose, from a list of the main available service providers, the online search engine, virtual assistant or web browser to which the operating system of the gatekeeper directs or steers users by default, and the online search engine to which the virtual assistant and the web browser of the gatekeeper directs or steers users by default.

- (4) The gatekeeper shall allow and technically enable the installation and effective use of third-party software applications or software application stores using, or interoperating with, its operating system and allow those software applications or software application stores to be accessed by means other than the relevant core platform services of that gatekeeper. The gatekeeper shall, where applicable, not prevent the downloaded third-party software applications or software application stores from prompting end users to decide whether they want to set that downloaded software application or software application store as their default. The gatekeeper shall technically enable end users who decide to set that downloaded software application or software application store as their default to carry out that change easily.

The gatekeeper shall not be prevented from taking, to the extent that they are strictly necessary and proportionate, measures to ensure that third-party software applications or software application stores do not endanger the integrity of the hardware or operating system provided by the gatekeeper, provided that such measures are duly justified by the gatekeeper.

Furthermore, the gatekeeper shall not be prevented from applying, to the extent that they are strictly necessary and proportionate, measures and settings other than default settings, enabling end users to effectively protect security in relation to third-party software applications or software application stores, provided that such measures and settings other than default settings are duly justified by the gatekeeper.

- (5) The gatekeeper shall not treat more favourably, in ranking and related indexing and crawling, services and products offered by the gatekeeper itself than similar services or products of a third party. The gatekeeper shall apply transparent, fair and non-discriminatory conditions to such ranking.
- (6) The gatekeeper shall not restrict technically or otherwise the ability of end users to switch between, and subscribe to, different software applications and services that are accessed using the core platform services of the gate-

keeper, including as regards the choice of Internet access services for end users.

- (7) The gatekeeper shall allow providers of services and providers of hardware, free of charge, effective interoperability with, and access for the purposes of interoperability to, the same hardware and software features accessed or controlled via the operating system or virtual assistant listed in the designation decision pursuant to Article 3(9) as are available to services or hardware provided by the gatekeeper. Furthermore, the gatekeeper shall allow business users and alternative providers of services provided together with, or in support of, core platform services, free of charge, effective interoperability with, and access for the purposes of interoperability to, the same operating system, hardware or software features, regardless of whether those features are part of the operating system, as are available to, or used by, that gatekeeper when providing such services.

The gatekeeper shall not be prevented from taking strictly necessary and proportionate measures to ensure that interoperability does not compromise the integrity of the operating system, virtual assistant, hardware or software features provided by the gatekeeper, provided that such measures are duly justified by the gatekeeper.

- (8) The gatekeeper shall provide advertisers and publishers, as well as third parties authorised by advertisers and publishers, upon their request and free of charge, with access to the performance measuring tools of the gatekeeper and the data necessary for advertisers and publishers to carry out their own independent verification of the advertisements inventory, including aggregated and non-aggregated data. Such data shall be provided in a manner that enables advertisers and publishers to run their own verification and measurement tools to assess the performance of the core platform services provided for by the gatekeepers.
- (9) The gatekeeper shall provide end users and third parties authorised by an end user, at their request and free of charge, with effective portability of data provided by the end user or generated through the activity of the end user in the context of the use of the relevant core platform service, including by providing, free of charge, tools to facilitate the effective exercise of such data portability, and including by the provision of continuous and real-time access to such data.
- (10) The gatekeeper shall provide business users and third parties authorised by a business user, at their request, free of charge, with effective, high-quality, continuous and real-time access to, and use of, aggregated and non-aggregated data, including personal data, that is provided for or generated in the context of the use of the relevant core platform services or services provided together with, or in support of, the relevant core platform services by those business users and the end users engaging with the products or services provided by those business users. With regard to personal data, the gatekeeper shall provide for such access to, and use of, personal data only where the data are directly connected with the use effectuated by the end users in respect of the products or services offered by the relevant business user through the relevant core platform service, and when the end users opt in to such sharing by giving their consent.

- (11) The gatekeeper shall provide to any third-party undertaking providing on-line search engines, at its request, with access on fair, reasonable and non-discriminatory terms to ranking, query, click and view data in relation to free and paid search generated by end users on its online search engines. Any such query, click and view data that constitutes personal data shall be anonymised.
- (12) The gatekeeper shall apply fair, reasonable, and non-discriminatory general conditions of access for business users to its software application stores, on-line search engines and online social networking services listed in the designation decision pursuant to Article 3(9).

For that purpose, the gatekeeper shall publish general conditions of access, including an alternative dispute settlement mechanism. ...
- (13) The gatekeeper shall not have general conditions for terminating the provision of a core platform service that are disproportionate. The gatekeeper shall ensure that the conditions of termination can be exercised without undue difficulty.

***art.7 – Obligation for gatekeepers on interoperability of number-independent interpersonal communications services***

- (1) Where a gatekeeper provides number-independent interpersonal communications services that are listed in the designation decision pursuant to Article 3(9), it shall make the basic functionalities of its number-independent interpersonal communications services interoperable with the number-independent interpersonal communications services of another provider offering or intending to offer such services in the Union, by providing the necessary technical interfaces or similar solutions that facilitate interoperability, upon request, and free of charge.
- (2) The gatekeeper shall make at least the following basic functionalities referred to in paragraph 1 interoperable where the gatekeeper itself provides those functionalities to its own end users:
  - (a) following the listing in the designation decision pursuant to Article 3(9):
    - (i) end-to-end text messaging between two individual end users;
    - (ii) sharing of images, voice messages, videos and other attached files in end to end communication between two individual end users;
  - (b) within 2 years from the designation:
    - (i) end-to-end text messaging within groups of individual end users;
    - (ii) sharing of images, voice messages, videos and other attached files in end-to-end communication between a group chat and an individual end user;
  - (c) within 4 years from the designation:
    - (i) end-to-end voice calls between two individual end users;
    - (ii) end-to-end video calls between two individual end users;
    - (iii) end-to-end voice calls between a group chat and an individual end user;

- (iv) end-to-end video calls between a group chat and an individual end user.
- (3) The level of security, including the end-to-end encryption, where applicable, that the gatekeeper provides to its own end users shall be preserved across the interoperable services. ...
- (8) The gatekeeper shall collect and exchange with the provider of number-independent interpersonal communications services that makes a request for interoperability only the personal data of end users that is strictly necessary to provide effective interoperability. Any such collection and exchange of the personal data of end users shall fully comply with [the GDPR].
- (9) The gatekeeper shall not be prevented from taking measures to ensure that third-party providers of number-independent interpersonal communications services requesting interoperability do not endanger the integrity, security and privacy of its services, provided that such measures are strictly necessary and proportionate and are duly justified by the gatekeeper. ...

***art. 9 – Suspension***

- (1) Where the gatekeeper demonstrates in a reasoned request that compliance with a specific obligation laid down in Article 5, 6 or 7 for a core platform service listed in the designation decision pursuant to Article 3(9) would endanger, due to exceptional circumstances beyond the gatekeeper's control, the economic viability of its operation in the Union, the Commission may adopt an implementing act setting out its decision to exceptionally suspend, in whole or in part, the specific obligation referred to in that reasoned request ...

***art. 10 – Exemption for grounds of public health and public security***

- (1) The Commission may, acting on a reasoned request by a gatekeeper or on its own initiative, adopt an implementing act setting out its decision, to exempt that gatekeeper, in whole or in part, from a specific obligation laid down in Article 5, 6 or 7 in relation to a core platform service listed in the designation decision pursuant to Article 3(9), where such exemption is justified on the grounds set out in paragraph 3 of this Article ...
- (3) An exemption pursuant to paragraph 1 may only be granted on grounds of public health or public security. ...

***art. 13 – Anti-circumvention***

- (1) An undertaking providing core platform services shall not segment, divide, subdivide, fragment or split those services through contractual, commercial, technical or any other means in order to circumvent the quantitative thresholds laid down in Article 3(2). No such practice of an undertaking shall prevent the Commission from designating it as a gatekeeper pursuant to Article 3(4). ...
- (4) The gatekeeper shall not engage in any behaviour that undermines effective compliance with the obligations of Articles 5, 6 and 7 regardless of whether that behaviour is of a contractual, commercial or technical nature, or of any other nature, or consists in the use of behavioural techniques or interface design. ...
- (6) The gatekeeper shall not degrade the conditions or quality of any of the core platform services provided to business users or end users who avail themselves of the rights or choices laid down in Articles 5, 6 and 7, or make the

exercise of those rights or choices unduly difficult, including by offering choices to the end-user in a non-neutral manner, or by subverting end users' or business users' autonomy, decision-making, or free choice via the structure, design, function or manner of operation of a user interface or a part thereof. ...

***Article 30 – Fines***

- (1) In the non-compliance decision, the Commission may impose on a gatekeeper fines not exceeding 10 % of its total worldwide turnover in the preceding financial year where it finds that the gatekeeper, intentionally or negligently, fails to comply with:
  - (a) any of the obligations laid down in Articles 5, 6 and 7; ...
- (2) Notwithstanding paragraph 1 of this Article, in the non-compliance decision the Commission may impose on a gatekeeper fines up to 20 % of its total worldwide turnover in the preceding financial year where it finds that a gatekeeper has committed the same or a similar infringement of an obligation laid down in Article 5, 6 or 7 in relation to the same core platform service as it was found to have committed in a non-compliance decision adopted in the 8 preceding years. ...

***art. 54 – Entry into force and application***

This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

It shall apply from 2 May 2023.