

We tried to provide a quick structural overview on the legal proposal of the Digital Markets Act, taking into account that we had to simplify in order to make the proposal more understandable – further analysis of the Digital Services Act and the Digital Market Act will follow on our website: fairdigitaleurope.eu – we share our knowledge via our newsletter service (subscribe [here](#)) which is for free.

Digital Markets Act

Structural Overview

Chapter I – subject matter, scope and definition

Art 1 subject matter, scope and definition

The regulation lays down harmonised rules to ensure fair markets in the digital sector.

The regulation applies to	The regulation shall not apply to
core platform services provided or offered by gatekeepers to business and end users in the EU; It does not matter where the gatekeeper is legally established nor which law might be otherwise applicable.	(3)a and b) to markets related to electronic communication networks and services (webs of electronically connected computers); (4) Interpersonal communication services (5) MS regulation about gatekeepers but not (6) according to primary law on competition issues (101 and 102 TTEU) (7) national authorities shall not take decisions contradicting decisions of the EC under this regulation – EC and MS should work closely together in their enforcement and actions

Art 2 definition

- 1) Gatekeeper means a provider of core platform services designated in Art. 3
- 2) Core platforms services are: online intermediation services [defined in Art 2 (5) of this regulation], online search engines [defined in Art 2 (6) of this regulation], online social network services [defined in Art 2 (7) of this regulation], video-sharing platform services [defined in Art 2 (8) of this regulation], number-independent interpersonal communication services [defined in Art 2 (9) of this regulation]; operating systems [defined in Art 2 (10) of this regulation], clous computing services [defined in Art 2 (11) of this regulation]; advertising services.

Chapter II – Gatekeepers

Art 3 (1) a Gatekeeper has a significant impact on the internal market (undertaking to which it belongs achieves an annual EEA turnover of 6.5 billion in the last three financial years or if the market capitalisation reaches 65 billion in the last financial year and provides a core platform service in 3 MS, Art 3 (2) a);

operates a core platform which serves as an important gateway for business users to reach end-users (= more than 45 million monthly active end users in EU and more than 10.000 yearly active business-users in EU) and has a strong position in its operation (= 45 million monthly end users and 10.000 yearly business users where reached in every of the last three years)

Art 3 (3) where all thresholds are reached (6.5 billion turnover, 65 billion market capitalisation, 45 million end-users and 10.000 business users) the Gatekeeper shall notify the EC within 3 months and send all relevant information. The Commission has 60 days to designate a provider of core platform services as a gatekeeper (4) – unless the providers presents sufficiently substantiated arguments that the provider is not a gatekeeper (5) – anyway is the commission free to decide who is considered a gatekeeper (6) even if not all thresholds are met.

Art 4 regulate the review of the status of the gatekeeper by EC if there has been (1a) change of facts or (1b) incorrect, incomplete or misleading information. (2) a regular review of the status is done minimum every 2 years and the Commission has to decide accordingly.

Chapter III – Practices of gatekeepers that limit contestability or are unfair

This chapter defines the obligations of the gatekeepers (Art 5 and 6) on the one hand and on the other hand it describes how the Obligations in Art 5 and 6 can be realized and if needed adjusted

<p>Art 5 – Obligations of Gatekeepers</p>	<p>Art 6 – Further specification of obligations for Gatekeepers</p>	<p>Art 7 to 13 – Role of EC and the Gatekeeper in order to fulfil or adjust the obligations of Art 5 and 6</p>
<p>A - Refrain from combining personal data sourced from core platform services with personal data from any other services offered by the gatekeeper or with personal data from third-party services and from signing in end users to other services of the gatekeeper in order to combine personal data, unless the end user has been presented with specific choice and consent was provided by the end user</p>	<p>A – refrain from using, in competition with business users, any data not publicly available (Data, that is not publicly available shall not include any aggregated and non-aggregated data generated by business users</p>	<p>Art 7 (1) Measures shall be effective in achieving the objective of Art 5 and 6; Art 7 (2) if they are not effective to be in compliance with Art 6 the EC can specify measures (4) the gatekeeper shall implement in order to achieve the objectives of the relevant obligation (5), such decision should be adopted within 6 months from the opening of the proceedings; preliminary findings shall be communicated by EC within 3 months Art 7 (4). The EC shall assess whether the intended or implemented measures ensure that there is no imbalance of Art 6 (1) points j and k. A gatekeeper may also ask for opening a proceeding</p>
<p>B – allow business users to offer the same products or services to end users through third party online intermediation services at prices or conditions that are different from those offered through the online intermediation services of the gatekeeper</p>	<p>B – allow end users to un-install any pre-installed software</p>	<p>Art 8 – The commission may suspend a specific obligation laid down in Art. 5 and 6 on request of the gatekeeper (yearly review)</p>
<p>C- Allow business users to promote offers to end users acquired via the core platform service, and to conclude contracts with these end users</p>	<p>C – allow the installation and effective use of third-party software applications</p>	<p>Art 9 – the EC may on request by a gatekeeper or on its own initiative exempt (in a whole or in parts) a core platform from the obligations of Art 5 and 6, only because of public morality, public health and public security</p>
<p>D- Refrain from preventing or restricting business users from raising issues with any relevant public authority relating to the practises of the gatekeeper</p>	<p>D – refrain from treating more favourable in ranking services and product offered by the gatekeeper itself</p>	<p>Art 10 – updating obligations for gatekeepers by the EC via delegated acts for Art 5 and 6</p>

E – Refrain from requiring business users to use, offer or interoperate with an identification service of the gatekeeper	E – refrain from technically restrictive the ability of end users to switch	Art 11 -Anti-Circumvention regulation
F – Refrain from requiring business users or end users to subscribe to or register with any other core platform services identified	F – allow business users and providers of ancillary services access to and interoperability with the same operating system	Art 12 – Obligation of Gatekeepers to inform EC about concentrations (prior to its implementation) by involving other platform services, mergers or similar concentration
G – provide advertisers and publishers to which it supplies advertising services, upon their request, with information concerning the price paid by the advertiser and publisher as well as the amount or remuneration paid to the publisher	G – provide advertisers and publishers, upon their request and free of charge, access to the performance measuring tools	
	H – provide effective portability of data generated through the activity of a business users or end user and should facilitate portability	Art 13 – Within 6 months after its designation of being a gatekeeper the gatekeeper shall submit to the commission an independently audited description of any techniques for profiling of consumers that the gatekeeper applies to or across its core platform services
	I – provide business users, or third parties authorised by a business user, free of charge, effective, high quality, continuous and real time access and use of aggregated or non-aggregated data	
	J – provide to any third-party providers of online search engines access to ranking, query, click data	
	K – apply fair and non-discriminatory general conditions of access for business users to its software application store designed in accordance with Art 3	

The EC can open a market investigation according to Art 14, this opening decision shall specify the a) date of opening, b) the description of the issue c) the purpose of the investigation. The EC can also re-open a market investigation if there has been a material change in any of the facts or if the decision was based in incomplete, incorrect or misleading information. There are three types of market investigations the EC can do

Art 15 – Market investigation for designating gatekeepers	Art 16 – Market investigation into systemic non-compliance	Art 17 – Market investigation into new services and new practises
For the purpose of examining whether a provider of core platform services should be designated as a gatekeeper + communication rules with the provider concerned	For the purpose of market investigation showing that a gatekeeper has systematically infringed the obligations laid down in Art 5 and 6 and has further strengthened or extended its gatekeeper position + communication rules with the provider concerned	For the purpose of market investigation on EC with the purpose of examining whether one or more services within the digital sector should be added to the list of core platform services or to detect types of unfair practices that may limit the contestability + communication rules with the provider concerned

Chapter V – Investigative, enforcement and monitoring powers

(Art 18) If the EC intends to carry out proceedings it shall adopt a decision

(Art 19-24) concerns the investigating powers of the EC;

(Art 25-29) concerns the enforcement powers of the EC;

Investigation

Art 19 – Request information	Art 20 – Power to carry out interviews	Art 21 – Set interim measure	Art 23 – Accept commitments by the gatekeeper and make them binding	Art 24 – Monitor the obligations and measures
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Art 25(1) – The commission shall adopt a non-compliance decision where it finds that a gatekeeper does not comply with

- a) Any of the obligations laid down in Art. 5 or 6

- b) Measures specified in Art 7 (2)
- c) Measures ordered pursuant to Art 16 (1)
- d) Interim measures ordered pursuant to Art 22 or
- e) Commitments made legally binding pursuant to Art 23

The EC has to communicate its findings to the gatekeeper concerned and explain the measures of consideration. When the non-compliance decision is adopted, the EC shall order the gatekeeper to cease and desist with the non-compliance within an appropriate deadline and provide information how it plans to comply with the decision; the gatekeeper shall provide the EC with the description of the measures it took.

If the Commission finds that the conditions of Art 25(1) are not met, it shall close the investigation by a decision.

Art 26 – Fines	Art 27 – Periodic penalty payments	Art 28 – Limitation periods for the imposition of penalties	Art 29 – Limitation periods for the enforcement of penalties
Gatekeeper: Max. 10% of its total turnover in the preceding financial year	Imposed on undertakings, including gatekeeper’s periodic penalty payments not exceeding 5% of the average daily turnover in the preceding financial year per day	The powers of the EC in Art 26 and 27 are subject to a three-year limit	The powers of the EC in Art 26 and 27 are subject to a five-year limit
Undertakings and associations of undertakings: Max 1% of its total turnover in the preceding financial year			

Before adopting a decision, the Commission shall give the gatekeeper or undertaking or association of undertaking concerned the opportunity of being heard (Art 30). The information collected pursuant to Articles 3, 12, 13, 19, 20 und 21 shall be used only for the purpose of this regulation (Art 31). The EC shall be assisted by the Digital Markets Advisory Committee (Art 32). When three or more MS request the EC to open an investigation pursuant to Article 15 the EC has to decide within 4 months if such an investigation is reasonable (Art 33)

Art 31 – Publication of decision	Art 32 – Review by the Court of Justice of EU	Art 33 – Implementing provisions	Art 37 – Exercise of delegation	Art 38 – Review	Art 39 – Entry into force
The EC shall publish the decisions pursuant to Articles 3, 7, 8, 9, 15, 16, 17, 22, 23 (1), 25, 26 and 27	The court has unlimited jurisdiction to review decisions by which the EC has imposed fines or periodic penalty payments and can cancel, reduce or increase	The EC can adopt implementing acts concerning Art 3, 6, 12, 13, 15, 16, 17, 20, 22, 23, 25 and 30	The EC has the power to adopt delegated acts as referred to in Art 3 (6) and 9 (1)	Every three years and report to EP, CEESC	This regulation shall enter into force on the 20 th day following that of its publication and shall apply from six months after its entry into force, Art 3, 15, 18, 19, 20, 21, 26, 27, 30, 31 and 34 shall apply from the date of entry into force.

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