WORKING PAPER

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WORKING DOCUMENT

From: General Secretariat of the Council
To: Working Party on Competition
Subject: Digital Markets Act proposal: Table for MS comments on articles of the compromise text (doc. ST 9971/21)

Delegations will find attached an additional table with updated MS comments on articles of the compromise text (doc. ST 9971/21).
The purpose of this Regulation is to contribute to the proper functioning of the internal market by laying down harmonised rules ensuring contestable and fair markets in the digital sector across the Union.

Strong support for Recital 7 needs to be adjusted accordingly, see our comments:

LT

Comments:

- LT supports the change as proper functioning of the internal market should remain DMA’s main goal.

*Here and further in the text LT supports the changes/new additions if not stated otherwise.

Subject matter and scope

Chapter I

Subject matter, scope and definitions

Drafting suggestions and comments:

LT - LT - IE - BE - CZ - FI - SE - LV - EE - ES

AC/T - ST 9971/21 - Presidency compromise text on DMA Proposal

Presidency's compromise text on Proposal for a Regulation of the European Parliament and of the Council on contestable and fair markets in the digital sector (Digital Markets Act)

ST 9971/21

LU – LT – LV – ES

Drafting suggestions and comments

HAVE ADOPTED THIS REGULATION:

Art. 1
LV (Drafting): 1. The aims of this Regulation are:
(a) to achieve a high level of end user and consumer protection and to strengthen the legal basis of Article 114 of the TFEU.
(b) to ensure a level playing field and fair competition in the digital sector where gatekeepers are present.
(c) to lay down harmonised rules concerning contestable and fair markets in the digital sector where gatekeepers are present.
(d) to support the establishment of the Union, irrespective of the place of establishment of the gatekeepers or the Union, wherever gatekeepers are present.

LV (Comments): It should be clearly stated that one of the main objectives of the Regulation is to protect and empower end users and consumers in the digital environment. The text proposed by the Commission mentions consumer protection but does not strengthen it sufficiently in comparison to strengthening of legal protection of business users. Not only SMEs but also consumers lack sufficient legal protection in the digital environment where gatekeepers are present.

ES (Comments): The new wording is welcomed as it provides a better link with the legal basis of Article 114 of the TFEU.
3. **This Regulation shall not apply to markets:**

<table>
<thead>
<tr>
<th>(Drafting):</th>
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- TheDMA and the European Electronic Communications Code:

| (Comments): | ES
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<td>ES point (q) of Article 2 of the Directive:</td>
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<td>unnumbered interpersonal communication services as defined in point (q) of Article 2 of Directive (EU) 2018/1972 other than those referred to in point (q) of Article 2 of Directive (EU) 2018/1972</td>
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<td>FT related to electronic communications networks as defined in point (a) of Article 2 of Directive (EU) 2018/1972</td>
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- It could be necessary to further clarify the connection and coexistence of the DMA and the European Electronic Communications Code.

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- related to electronic communications services as defined in point (4) of Article 2 of Directive (EU) 2018/1972 other than those referred to in point (4)(b) of Article 2 of that Directive.

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<td>FT related to electronic communications networks as defined in point (j) of Article 2 of Directive (EU) 2018/1972</td>
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</table>
where these obligations are
understandings, including providers of core platform services, for matters.

**Updated MS comments on ST 9971/21 - Presidency compromise text on DMA Proposal - ARTICLES (739 rows)**
Unrelated to do not result from the relevant undertakings having a status of gatekeeper within the meaning of this Regulation in order to protect consumers or to fight against acts of unfair competition.

ULATOR (Comments):

See joint BE-LU proposal in document WK 9702 2021 I NIT.

LT (Comments):

See also comments on recitals 6, 7, 8 and 9.

Regulation principles:

The DMA is meant to provide a harmonised legal framework that can be applied consistently and uniformly across the EU. Article 1.5 as it stands could have the adverse effect of turning the objective of full harmonisation into a minimum harmonisation Directive that would directly undermine the objective and logic of the DMA, and is not in line with Better Regulation principles. In order to mitigate the risk of fragmentation and safeguard the legal basis of the DMA, LT supports the amendments proposed by BE and LU.

See joint BE-LU proposal in document WK 9702 2021 I NIT.

(Comments):

LT could support further clarification on the relation between DMA and Article 114 TFEU. LT supports the amendments proposed in order to mitigate the risk of fragmentation and safeguard the legal basis.

(Comments):
In order to ensure the frictionless and coherent application of this Regulation throughout the internal market and to guarantee a fully harmonized approach, the European Commission shall be the sole enforcer and decision maker on the correct application of the rules and promoted approach the European Commission shall be the sole enforcer of the Regulation throughout the Internal market and to guarantee a fully harmonized approach the European Commission shall be the sole enforcer of this Regulation.

It is important to state clearly in Article 1, the Commission will be the sole

(Comments):
In order to mitigate the risk of fragmentation and safeguard the legal basis of the DMA, Article 114 TFEU, I support the amendments proposed by BE and LU (Drafting):

5. Member States shall not impose on gatekeepers further obligations by way of laws, regulations or administrative action for the purpose of enforcing obligations which are compatible with Union law on core platform services or providers of platform services, in particular, other enforcement public interests in compliance with Union law, pursuant to other legislation, Member States from consulting consumers and final markets. This is without prejudice to the exercise of powers by way of laws, regulations or administrative action for the purpose of enforcing obligations which are not result from the relevant undertakings having a status of gatekeepers within the meaning of this Regulation and which would be unrelated to the scope of this Regulation and where these obligations are not imposed on the undertakings, including providers of core platform services.

BE (Comments):

- cf. BE-LU proposal

CZ (Comments):

- CZ

In order to protect consumers or to fight against acts of unfair competition, in particular, undertakings having a status of gatekeepers within the meaning of this Regulation, the relevant undertakings shall not impose further obligations by way of laws, regulations or administrative action for the purpose of enforcing obligations which are compatible with Union law on core platform services or providers of core platform services, in particular, other enforcement public interests in compliance with Union law, pursuant to other legislation, Member States from consulting consumers and final markets. This is without prejudice to the exercise of powers by way of laws, regulations or administrative action for the purpose of enforcing obligations which are not result from the relevant undertakings having a status of gatekeepers within the meaning of this Regulation and which would be unrelated to the scope of this Regulation and where these obligations are not imposed on the undertakings, including providers of core platform services.
5. Member States shall not impose on gatekeepers further obligations by way of laws, regulations or administrative action for the purpose of ensuring contestable and fair markets. This is without prejudice to rules pursuing other legitimate public interests, in compliance with Union law.

(Comments):

FI supports the proposed compromise text in Art. 1(5).

EE considers that Art. 1(5) could be deleted, similarly as BE-LU proposes.

FI supports as a whole the draft proposal on Article 1(5) and relevant recitals 6-9 made by BE-LU on 19 July 2021.

(Comments):
In particular, nothing in this Regulation precludes Member States from imposing obligations, which are compatible with Union law, on undertakings, including providers of core platform services, for matters outside the scope of this Regulation and where these obligations are unrelated to the relevant undertakings having a status of gatekeepers as they are applied to undertakings other than gatekeepers.

6. This Regulation is without prejudice to the application of Articles 101 and 102 TFEU. It is also without prejudice to the application of national rules prohibiting anticompetitive agreements, decisions, concerted practices and abuses of dominant positions, national competition rules prohibiting other forms of unilateral conduct, and national rules prohibiting and controlling concerted practices.

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**(Comments):**

**EE** supports the proposal on Article 1(5) and relevant recitals 6-9 made by **BE** on 19 July 2021.

**LT** could support further clarification on the relation between DMA and competition law, including clearer description of wordings used in Article 1(5) and relevant recitals 6-9, in order to protect consumers or to fight against acts of unfair competition.

带走消费者，EE支持该提案在《竞争法》应用的文章1(5)和相关条文6-9的建议，BE在7月19日提出。LT可以支持进一步的澄清，关于DMA和竞争法之间的关系，包括对相关条文6-9的更清晰的描述，以保护消费者，或打击不公平竞争行为。
1.6, e.g. "other forms of unilateral conduct." It is particularly important to avoid any ambiguities listing "without prejudice" cases. However, any amendments to Art 1.6 should be made in the light of the Article 114 TFEU and an opinion of the Council Legal Services. LV could support any technical adjustments of Art 1.6 as at the moment para 6 mainly covers competition aspects andaddy monophy – only DSA.

This Regulation is without prejudice to the application of Articles 101 and 102 TFEU. It is also without prejudice to the application of national competition rules prohibiting other forms of unilateral conduct, concerted practices and abuses of dominant positions. Directive 93/13/EEC and Regulation (EU) 2019/1150.

LV

This Regulation is without prejudice to the application of Articles 101 and 102 TFEU. It is also without prejudice to the application of national competition rules prohibiting other forms of unilateral conduct, concerted practices and abuses of dominant positions.

LV

This Regulation is without prejudice to the application of Articles 101 and 102 TFEU. It is also without prejudice to the application of national competition rules prohibiting other forms of unilateral conduct, concerted practices and abuses of dominant positions.
### Definitions

<table>
<thead>
<tr>
<th>Article</th>
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<tr>
<td>2</td>
<td>SE suggests a clarification of the amendment.</td>
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<tr>
<td>32a</td>
<td>The Commission and Member States shall cooperate and coordinate their enforcement actions on the basis of the principles and rules established in Article 32a.</td>
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**SE** (Drafting): The Commission and Member States shall cooperate and coordinate their enforcement actions on the basis of the principles and rules established in Article 32a.

**Comments:**
- SE suggests a clarification of the amendment.
- SE suggests that enforcement actions should be conducted in accordance with the principles and rules established in Article 32a.

### ARTICLE

<table>
<thead>
<tr>
<th>Comments</th>
<th>Regulation should build upon and contribute to the current legal framework for consumer protection. However, it should be without prejudice to the application of consumer protection law: The Unfair Commercial Practices Directive and the Unfair Contract Terms Directive.</th>
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<tr>
<td>ST 9971/21</td>
<td>National authorities shall not take decisions which would run counter to a decision adopted by the Commission under this Regulation. The Commission and Member States shall work in close cooperation and coordination in their enforcement actions on the basis of the principles and rules established in Article 32a.</td>
</tr>
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**Comments:**
- ST 9971/21: Regulation should build upon and contribute to the current legal framework for consumer protection. However, it should be without prejudice to the application of consumer protection law: The Unfair Commercial Practices Directive and the Unfair Contract Terms Directive.
- National authorities shall not take decisions which would run counter to a decision adopted by the Commission under this Regulation. The Commission and Member States shall work in close cooperation and coordination in their enforcement actions on the basis of the principles and rules established in Article 32a.
We would caution against including any new CPS to this list without proper impact assessment, in particular where the “important gateway” function for business users to reach end users is less obvious.

LT could support any further clarification on what constitutes one CPS. Any suggestion to include additional CPSs, in our view, would require proper impact assessment to include additional CPSs. In our view, would require proper preliminary could support the list proposed by the Commission. Any function for business users to reach end users less obvious. PROPER IMPACT ASSESSMENT, IN PARTICULAR WHERE THE “IMPORTANT GATEWAY” NECESSARY INCLUDING ANY NEW CPS IN THIS LIST WITHOUT PROPER IMPACT ASSESSMENT, IN PARTICULAR WHERE THE “IMPORTANT GATEWAY” FUNCTION FOR BUSINESS USERS TO REACH END USERS IS LESS OBVIOUS.

<table>
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<th>(a) number-independent interpersonal communication services:</th>
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<tr>
<td>(b) online intermediation services;</td>
</tr>
<tr>
<td>(c) online search engines;</td>
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<tr>
<td>(d) online social networking services;</td>
</tr>
<tr>
<td>(e) online intermediation services;</td>
</tr>
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Updated MS comments on ST 9971/21 - Presidency compromise text on DMA Proposal - ARTICLES (739 rows)
We are not convinced that number-independent interpersonal communication services function as an important gateway mentioned in Article 3(1)(b). We therefore propose to delete this.

LT could support suggestion, made by other MSs, to delete number-independent interpersonal communication services. The problems arising from these services could be addressed by existing law.
EF

web browsers

Drafting:

BE

SE suggests a minor linguistic change of the amendment.

Comments:

BE

SE

BE

explanation in the recitals of the "advertising services" and "advertising intermediation services" could provide more legal clarity.

Drafting:

BE

SE

BE

platform services listed in points (a) to (g):

Drafting:

BE

SE

BE

Web browsers could provide a platform for advertising services, including any advertising networks, advertising exchanges and any other advertising intermediation services, provided by a provider of advertising services, including any advertising networks, advertising exchanges and any other advertising intermediation services, provided by a provider of advertising services, including any advertising networks, advertising exchanges and any other advertising intermediation services.

Drafting:

BE

SE

BE

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BE supports the proposal made by DE and FR to include web browsers in the list of core platform services.

1. Article 1(1) of Directive (EU) 2010/135/EC (Video-sharing platform service) means a service as defined in point (aa) of Article 1(1) of Directive (EU) 2010/135/EC.

2. Article 2 of Regulation (EU) 2019/1150 (Online search engine) means a digital service as defined in point 5.

3. Article 1(1) of Directive (EU) 2010/135/EC (Information society services) means the sector of products and services provided by means of or through information society services.

4. Article 1(1) of Directive (EU) 2010/135/EC (Information society service) means any service within the list of core platform services.

5. Article 2 of Regulation (EU) 2019/1150 (Online information services) means services as defined in point 4.

6. Article 2 of Regulation (EU) 2019/1150 (Online social networking service) means a platform that enables end users to connect, share, discover and communicate with each other across multiple devices and, in particular, via chats, posts, videos and recommendations.

7. Article 1(1) of Directive (EU) 2010/135/EC (Video-sharing platform service) means a service as defined in point (aa) of Article 1(1) of Directive (EU) 2010/135/EC.

8. Information society service' means any service within the meaning of point (b) of Article 1(1) of Directive (EU) 2015/1535; ‘Digital sector' means the sector of products and services provided by means of or through information society services; ‘Online intermediation services' means services as defined in point 2 of Article 2 of Regulation (EU) 2019/1150; ‘Online social networking service' means a platform that enables end users to connect, share, discover and communicate with each other across multiple devices and, in particular, via chats, posts, videos and recommendations.
Updated MS comments on ST 9971/21 - Presidency compromise text on DMA Proposal

<table>
<thead>
<tr>
<th>Number</th>
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<tbody>
<tr>
<td>1</td>
<td>Number independent interpersonal communications service' means a service as defined in point 7 of Article 2 of Directive (EU) 2018/1972;</td>
</tr>
<tr>
<td>2</td>
<td>'Operating system' means a system software which controls the basic functions of the hardware or software and enables software applications to run on it;</td>
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<td>3</td>
<td>Software application' means any digital product or service that is focused on software applications as the intermediate product or service;</td>
</tr>
<tr>
<td>4</td>
<td>Software application stores’ means a type of online Cloud computing services, which is focused on software applications as the intermediate product or service, which controls the basic functions of the hardware or software and enables software applications to run on it;</td>
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<tr>
<td>5</td>
<td>Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) (OJ L 95, 15.4.2010, p. 1);</td>
</tr>
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BE: It seems that there is no point an...
The definition of active monthly end users shall be specified in an Annex.

(Comments): ES

LT supports MSs which ask for greater clarity in the DMA itself.

(Comments): LT

ANCILLARY SERVICES

Ancilliary service’ means services provided in the context of or together with core platform services, including payment services as defined in point 3 of Article 4 of Directive (EU) 2015/2366 and technical services which support the provision of payment services as defined in this Directive and in accordance with Article 2 of Directive (EU) 2015/2366.

(15) 'Identification service' means a type of ancilliary services that enables any type of verification of the identity of end users or business users, regardless of the technology used.

(16) 'End user' means any natural or legal person using core platform services other than as a business user.

LT, like many other MSs, would like to see clearer definition (e.g. with explanations what constitutes fulfilment or advertising services and in which cases these services could be treated as ancilliary/separate CPS) to avoid any ambiguity.

ES would like to see clearer definition (e.g. with explanations what constitutes fulfilment or advertising services and in which cases these services could be treated as ancilliary/separate CPS) to avoid any ambiguity.

LT supports MSs, which ask for greater clarity in the DMA itself.

(Comments): LT

The definition of active monthly end users shall be specified in an Annex.

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LT supports MSs, which ask for greater clarity in the DMA itself.

(Comments): LT
<table>
<thead>
<tr>
<th>Comments:</th>
<th>START OF COMMUNICATIONS ON REGULATORY ASPECTS OF ONLINE INTERMEDIATION SERVICES OR ONLINE SOCIAL NETWORKING SERVICES, AS PRESENTED, OR AS PRESENTED AFTER COMMISSION'S REVISES, IF ANY.</th>
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<tr>
<td><strong>Commission’s input at this point would be highly appreciated.</strong></td>
<td>nevertheless the possibility of the Commission to update the methodology or indicators chosen. This is particularly important given that the text of the rapporteur already includes these definitions. LT supports MS, which asks for greater clarity in the DMA itself.</td>
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*Business user* means any natural or legal person acting in a commercial or professional capacity using core platform services for the purpose of or in the course of providing goods or services to end users.
<table>
<thead>
<tr>
<th>Article</th>
<th>Comments</th>
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<tbody>
<tr>
<td>19</td>
<td>'Data' means any digital representation of acts, facts or information and any compilation of such acts, facts or information, including in the form of sound, visual or audiovisual recording;</td>
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<tr>
<td>20</td>
<td>'Personal data' means any information as defined in point 1 of Article 4(2) of Regulation (EU) 2016/679;</td>
</tr>
<tr>
<td>21</td>
<td>'Non-personal data' means data other than personal data as defined in point 1 of Article 4(2) of Regulation (EU) 2016/679;</td>
</tr>
<tr>
<td>22</td>
<td>'Control' means the possibility of exercising decisive influence or control in undertakings.</td>
</tr>
<tr>
<td>23</td>
<td>'Turnover' means the amount derived by an undertaking as defined in Article 5(1) of Regulation (EC) No 139/2004;</td>
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<tr>
<td>24</td>
<td>'Undertaking' means all linked enterprises or connected undertakings that form a group through the direct or indirect control of an undertaking by another and that are engaged in an economic activity;</td>
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<tr>
<td>25</td>
<td>'Profiling' means profiling as defined in Article 4(4) of Regulation (EU) 2016/679;</td>
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**Comments:**
- **BE:** We support the introduction of this definition that provides more clarity.
- **CZ:** CZ supports the use of the term "undertakings", which is established in competition law.
- **BE:** "Control" means the possibility of exercising decisive influence on an undertaking, as understood in Article 3(2) of Regulation (EC) No 139/2004.
- **CZ:** CZ supports the introduction of this definition that provides more clarity.
- **BE:** "Personal data" means any information as defined in point 1 of Article 4(2) of Regulation (EU) 2016/679.
- **CZ:** Undertakings means all linked enterprises or connected undertakings.

**Updated MS comments on ST 9971/21 - Presidency compromise text on DMA Proposal - ARTICLES (739 rows)**
**Chapter II**

**Gatekeepers**

**Article 3**

**Designation of gatekeepers**

A provider of core platform services in undertaking shall be designated as a gatekeeper if:

- **EE** supports reference to 'undertaking' instead of 'provider'.

<table>
<thead>
<tr>
<th>Comments:</th>
<th>EE supports the introduction of this definition.</th>
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**Comments:**

- **BE** supports the introduction of this definition.

See comment in Article 33a.

(Comments): **ES** supports the introduction of this definition.

(27) National court means a court or tribunal of a Member State within the meaning of Article 267 TFEU.

(26) Consent of the data subject means consent as defined in Article 4(11) of Regulation (EU) 2016/679.

*Updated MS comments on ST 9971/21 - Presidency compromise text on DMA Proposal - ARTICLES (739 rows)*
Spain welcomes this modification as it provides legal certainty to the text. 

References to “provider of core platform services” should be modified accordingly.

<table>
<thead>
<tr>
<th>(a)</th>
<th>(b)</th>
<th>(c)</th>
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<tr>
<td>where it provides a core platform service which serves as an important gateway for business users to reach end users and enjoys an entrenched and durable position in its operations in the Union.</td>
<td>if it has a significant impact on the internal market;</td>
<td>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.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>2.</th>
<th>A provider of core platform services shall be presumed to satisfy:</th>
</tr>
</thead>
<tbody>
<tr>
<td>it has an annual EEA turnover equal to or above EUR 6.5 billion in each of the last three financial years, or where the average market capitalisation or equivalent fair market value of the undertaking to which it belongs amounted to at least EUR 6.5 billion in the last financial year, and it provides a core platform service in at least three Member States;</td>
<td>the requirement in paragraph 1 point (a) where it achieves an annual EEA turnover equal to or above EUR 6.5 billion in each of the last three financial years, or where the average market capitalisation or equivalent fair market value of the undertaking to which it belongs amounted to at least EUR 6.5 billion in the last financial year;</td>
</tr>
</tbody>
</table>

Let us compile the 21st Presidency's compromise text on DMA Proposal - ARTICLES (739 rows)
<table>
<thead>
<tr>
<th>Comments</th>
<th>LT</th>
</tr>
</thead>
<tbody>
<tr>
<td>LT</td>
<td>Updated MS comments on ST 9971/21 - Presidency compromise text on DMA Proposal - ARTICLES (739 rows)</td>
</tr>
<tr>
<td>LT</td>
<td>for the purpose of the first subparagraph, monthly active end users and users established in the Union in the last financial year; monthly active end users shall refer to the average number of monthly active end users throughout the largest part of the last financial year;</td>
</tr>
<tr>
<td>LT</td>
<td>A reference to the Annex might be needed. The drafting of IMCO’s report has been used as inspiration for this drafting.</td>
</tr>
<tr>
<td>ES</td>
<td>comments:</td>
</tr>
<tr>
<td>ES</td>
<td>comments:</td>
</tr>
<tr>
<td>ES</td>
<td>Annex to this Regulation.</td>
</tr>
<tr>
<td>ES</td>
<td>Annex to this Regulation. Taking into account [the indicators/methodology] set out in the Annex to this Regulation, the Council includes an Annex in the compromise text in order to have a clearer understanding of the proposal’s dollar report has been used as inspiration for this drafting.</td>
</tr>
<tr>
<td>ES</td>
<td>A reference to the Annex might be needed. The drafting of IMCO’s report has been used as inspiration for this drafting suggestion. It is important that the Council includes an Annex in the compromise text in order to have a clearer understanding of the proposal’s dollar requirement in paragraph 1 point (b) where it provides a core definition:</td>
</tr>
<tr>
<td>ES</td>
<td>users/business users; (p) users/business users shall be measured business users established in the Union in the last financial year. Monthly active end users and yearly active business users shall be measured taking into account the indicators/methodology set out in the Annex to this Regulation.</td>
</tr>
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<td>ES</td>
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</tr>
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<td>LT</td>
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EU would like to see an explanation of "throughout the largest part of the last financial year;" (how it should be calculated and defined?)

BE (Drafting):
for the purpose of the first subparagraph, monthly active end users shall refer to the average number of monthly active end users throughout at least six, not necessarily consecutive, months of the largest part of the last financial year.

BE (Comments):
BE believes "(...)the largest part of the year" could be too vague and wonders if a more specified period is not desirable.

BE (Comments):
BE believes "(...)the largest part of the year" could be too vague and wonders if a more specified period is not desirable.

LU (Drafting):
A failure by a relevant undertaking to provide information pursuant to the Commission's request shall be deemed to be a breach of the undertaking's obligation under the Regulation to provide the information referred to in Article 19 to the Commission.

LU (Comments):
Should the Commission consider that an undertaking has failed to provide information pursuant to the first subparagraph of this paragraph, the Commission shall require that undertaking pursuant to Article 19 to provide the relevant information within 10 working days. The failure by the undertaking to comply with the Commission's request pursuant to Article 19 shall be deemed to be a breach of the undertaking's obligation under the Regulation to provide the information referred to in Article 19.
Article 19 shall not prevent the Commission from designating these providers as a gatekeeper based on any other evidenced information demonstrating that the quantitative thresholds are met available to the Commission. Where the undertaking providing core platform services complies with the request, the Commission shall apply the procedure set out in paragraph 4 at any time.

LU (Comments):
The 10 deadline is very short for a gatekeeper to provide the quantitative information. Therefore, at least, the Commission should designate a gatekeeper not only based on "any information available" but there needs to be clear evidence and demonstration that the quantitative thresholds are met. Any evidence is too vague and unreliable.

ES (Comments):
The amendment is welcome as it ensures legal certainty while maintaining incentives for gatekeepers to notify.

LU (Comments):
The procedure set out in paragraph 4 at any time.

Updated MS comments on S9971/21 - Presidency compromise text on DMA Proposal - ARTICLES (739 rows)
A failure by a relevant provider of an undertaking providing core platform services meets all the thresholds as defined in the paragraphs that follow, and has failed to notify the required information pursuant to the first subparagraph of this paragraph, the Commission shall require that provider to provide the relevant information relating to the quantitative thresholds identified within 10 working days. The failure by the provider to comply with the Commission’s request pursuant to Article 19 shall not prevent the Commission from designating that provider as a gatekeeper based on any other information available to the Commission. Where the provider complies with the request, the Commission shall apply the procedure set out in paragraph 4 at any time.
(p) The deadline set by the Commission under Article 19 (Article 26(2)(a) and

notwithstanding the first subparagraph of Article 3(3) and for reasons of

individual case. In addition, there are sanctions both for missing the first

paragraph of this paragraph, the Commission shall provide the relevant

information. SE questions if it would not be best to maintain that order. In

that context, it considers that it may be an advantage for the Commission to be able to

SE (Comments):

(p) Pursuant to the first subparagraph of Article 19 of the Treaty, the Commission shall provide the relevant information. SE questions if it would not be best to maintain that order. In that context, it considers that it may be an advantage for the Commission to be able to

SE (Comments):
The Commission shall, without undue delay and at the latest 60 working days after receiving the complete information referred to in paragraph 3, designate the provider of undertakings providing core platform services that meets all the thresholds of paragraph 2 as a gatekeeper, unless that provider or undertaking presents sufficiently substantiated arguments to demonstrate that, in the circumstances in which the relevant core platform service operates, and taking into account the elements listed in paragraph 6, that provider or undertaking exceptionally does not satisfy the requirements of paragraph 1 although it meets all the thresholds in paragraph 2.

Comments: In general, we prefer the Commission's wording as this new one is very complex and does not add any new element.

LT: Supports DK suggestion to provide guidelines to clarify the evidentiary standard and the type of evidence that companies have to present to rebut the presumption of being a gatekeeper.

LT (Comments): Also a question for clarification. Do we understand correctly that it is possible to rebut the presumption only at the stage of notification (Arts 19 and 3.4), although it meets all the thresholds of paragraph 2 as a gatekeeper?
We prefer the Commission’s wording as this new one is very complex and

(Comments)

Nevertheless, we note

Paragraph 7 of Paragraph 7 of Paragraph 6 to assess whether the criterion in

If the Commission believes the undertaking has not notified the Commission of the amendment to the relevant core platform service, it provides due notice to the relevant authority and the relevant undertaking in accordance with the procedure laid down in Article 15(2). If the

(Drafting)

Where the relevant undertaking presents such sufficiently substantiated

LU

(Drafting)

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Updated MS comments on ST 9971/21 - Presidency compromise text on DMA Proposal

The new wording may create doubts on the elements/criteria that should be taken into account in assessing the legal grounds of the Commission to designate a company as a gatekeeper.

Comments:

LT still analyses the paragraph as the legal grounds for the Commission to designate a company as a gatekeeper.

Comments:

ES assesses whether the criteria in paragraph 1 are met.

Drafting:

Where the gatekeeper undertaking presents such sufficiently substantiated arguments to demonstrate that it exceptionally does not satisfy the requirements of paragraph 1 although it meets all the thresholds in paragraph 1, the Commission shall designate the undertaking as a gatekeeper, in accordance with the procedure laid down in Article 15(3). Where the gatekeeper undertaking is the relevant core platform service it provides that does not satisfy the requirements of paragraph 1, the Commission shall designate the undertaking as a gatekeeper, in accordance with the procedure laid down in Article 15(3) and the criteria of Article 3(6) should still at least be considered.

Comments:

ES

The new wording may create doubts on the elements/criteria that should be taken into account in assessing the legal grounds of the Commission to designate a company as a gatekeeper.

Comments:
The Commission is empowered to adopt delegated acts in accordance with Article 37, to specify the methodology for determining whether the quantitative thresholds laid down in paragraph 2 are met, and to regularly adjust it to market and technological developments where necessary, in particular as regards the threshold in paragraph 2, point (a).

Drafting:
The Commission is empowered to adopt delegated acts in accordance with Article 37, to specify the methodology for determining whether the quantitative thresholds laid down in paragraph 2 are met, and to regularly adjust it to market and technological developments where necessary, in particular as regards the threshold in paragraph 2, point (a).

Comments:
LT still analysis the paragraph and the use of delegated acts in the DMA. In our opinion, the main parameters of quantitative thresholds should be established in the DMA (procedural part of the Annex), this would establish in the DMA a possibility that delegated act will not be adopted on time (having in mind an extremely short transitional period and a huge amount of delegated and implementing acts the Commission will have to adopt). As a compromise, LT could support DK comments and suggestions regarding Art 3.5.

Comments:
See proposal for addition in recital 17 (in line with earlier comments from SE.)
<table>
<thead>
<tr>
<th>Comment</th>
<th>Drafting</th>
<th>Consideration</th>
</tr>
</thead>
<tbody>
<tr>
<td>LT: The Commission is empowered to update the list of indicators/methodologies at any time.</td>
<td>LT: The Commission is empowered to adopt delegated acts in accordance with Article 37 to specify the methodology for determining whether the quantitative thresholds laid down in paragraph 2 are met.</td>
<td>The list of indicators/methodologies set out in the Annex to this Regulation shall take into account some or all of the following elements, irrespective of the approach taken by the Commission.</td>
</tr>
<tr>
<td>Lt: the same comment as referred to in Art. 3 para 2.</td>
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<td>It should be clear that all of these elements need to be looked at by the Commission.</td>
</tr>
</tbody>
</table>

**LT:** the same comment as referred to in Art 3.4 para 2.

**ES:** Updated MS comments on ST 9971/21 - Presidency compromise text on DMA Proposal - ARTICLES (739 rows).
Updated MS comments on ST 9971/21 - Presidency compromise text on DMA Proposal

(739 rows)

---

The Commission initially promised the investigation under Article 3(6) would be holistic yet the compromise text does not provide for such an approach – in fact there is no longer any reference to competitive market dynamics.

Comments:

IE

---

The availability of equally effective ways for business users and end users to reach each other and the number of business users depending on using the core platform service to reach end users and the number of end users.

Comments:

IE

---

Entry barriers derived from network effects and data-driven advantages, in particular in relation to the provider's undertaking's access to and collection of personal and non-personal data or analytics and position of the provider or undertaking providing core platform services or the size, including turnover and market capitalisation, operations and strategy of the company.

Comments:

IE

---

Updated MS comments on ST 9971/21 - Presidency compromise text on DMA Proposal - ARTICLES (739 rows)
access to and collection of personal and non-personal data driven advantages, in particular in relation to the provider undertaking's ecosystem effects and data.

(Drafting)

LT

network effect.

The Commission should define a network effect based on an explanation of how the Commission would designate a gatekeeper based on a network effect (in a text or recital). Justifying the change as well as an explanation of how the Commission would decide on a network effect in itself does not constitute a network effect itself. Therefore, we would be happy to see broader explanation (in a recital) justifying the change as well as an explanation of how the Commission would decide on a network effect.

LT would have preferred the Commission's version ("entry barriers derived from network effects") as a network effect in itself does not constitute a network effect itself.

Comments:

LT

provision so broad.

This is why we should focus on rather than leave this provision so broad. This is what we should focus on rather than leave this

The Commission's Impact Assessment is clear that network effects on scale and scope what the provider undertaking benefits from,

provides significant advantages, in particular in relation to the provider undertaking's personal data or analytics capabilities;

IE

entry barriers derived from network effects, ecosystem effects and data
driven advantages, in particular in relation to the provider undertaking's

(Comments):

LU

scale and scope effects on the provider undertaking benefits from,

effects and data driven advantages, in particular in relation to the

Updated MS comments on ST 9971/21 - Presidency compromise text on DMA Proposal - ARTICLES (799 rows)
Updated MS comments on ST 9971/21 - Presidency compromise text on DMA Proposal - ARTICLES (739 rows)

| Drafting: | SE | Subsidisation or combination of data from different sources. Undertaking providing core platform services, for instance allowing cross-structure, relevant business or services characteristics, such as a conglomerate corporate structure or vertical integration of the undertaking providing core platform services, for instance allowing cross-subsidisation or combination of data from different sources. |
| Comments: | LT | Still analysing the paragraph. |
| Comments: | LT | Still analysis the paragraph. |

| IE | (f) | Other structural market characteristics, such as a conglomerate corporate structure or vertical integration of the undertaking providing core platform services, for instance allowing cross-subsidisation or combination of data from different sources. |

| IE | (e) | Switch or multi-home: Behavioural bias reducing the ability of business users and end users to switch or multi-home, including switching costs and end-user lock-in, including switching costs and end-user lock-in. |

| LT | (Comments): | LT | Still analysis the paragraph. |

| LT | (Comments): | LT | Still analysis the paragraph. |
| Comments: | LT still analysis the paragraph. At some point LT would like to see a clearer structure of the whole Art 3 as now different stages and legal grounds of a designation process seem too blended. |
| Comments: | SE understands it as the text after “such as” are examples and do not constitute an exhaustive list of characteristics. |
| Comments: | ES due to the fact that 3(6) is an open list of characteristics, it might be better to include this reference to conglomerate corporate structure or vertical integration in the recitals. |
| Comments: | LT still analysis the paragraph. At some point LT would like to see a clearer structure of the whole Art 3 as now different stages and legal grounds of a designation process seem too blended. |
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In the interest of legal certainty, the relevant obligations for each CPS

(Comments):

IE outlined in Articles 5 and 6 the gatekeeper has to comply with identified by the Commission shall specify with which of the obligations outlined in Articles 5 and 6 the gatekeeper has to comply with.

For each gatekeeper undertaking identified by the Commission shall specify with which of the obligations outlined in Articles 5 and 6 the gatekeeper has to comply with.

LT would welcome clarification defining "investigative measures ordered by the Commission" (which measures? according to which Art(s)?)

(Comments): LT supports MSs, which ask to indicate a place where the list will be established (a designation decision?).

IE (Drafting): For each gatekeeper undertaking identified by the Commission shall specify with which of the obligations outlined in Articles 5 and 6 the gatekeeper has to comply with.

LT would welcome clarification defining "investigative measures ordered by the Commission" (which measures? according to which Art(s)?)
Not all obligations will apply to all gatekeepers, as Articles 5 and 6

(Comments):

Technical amendment: it is considered best to refer to an administrative act (the designation decision).

(Comments):

Technical amendment: it is considered best to refer to an administrative act, rather than to a designation decision.

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(Comments):

Technical amendment: it is considered best to refer to an administrative act, rather than to a designation decision.
The Commission may upon request of its own initiative reconsider, amend or repeal at any moment a decision adopted pursuant to Article 3.  

The gatekeeper shall comply with the obligations laid down in Articles 5 and 6 within six months after a core platform service has been included in the list designation decision pursuant to paragraph 7 of this Article.  

(Comments):

Technical amendment: it is considered best to refer to an administrative act (the designation decision) instead of a list.

ES

Article 4  
Review of the status of gatekeepers

ES

(Comments):

LT

in order to ensure legal clarity, we strongly suggest a further explanation (preferably in the operational part) on how this directly applicable obligation relates to regulatory dialogue under Art 7, e.g. should the dialogue procedure be conducted within a 6 months period?
The Commission shall regularly, and at least every 2 years, review whether the designated gatekeepers continue to satisfy the requirements laid down in Article 3(1), or whether new providers of core platform services satisfy those requirements. The regular review shall also examine whether the list of affected core platform services individually serve as an important gateway for business users to reach end users as referred to in Article 3(1)(b). The Commission shall request based on the first subparagraph of the designated gatekeepers.

LT: questions for clarification.

IE: (Drafting):

If under market investigation process (c.f. Art 15), there has been a substantial change in any of the facts on which the decision was based; the decision was based on incomplete, incorrect or misleading information provided by the undertakings.

The decision was based on incomplete, incorrect or misleading information provided by the undertakings.
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<tr>
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<td>The Commission shall publish and update the list of gatekeepers and the list of the core platform services for which they need to comply with the obligations laid down in Articles 5 and 6 on an ongoing basis.</td>
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<td><strong>IE (Drafting):</strong></td>
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<td>Where the Commission, on the basis of the review pursuant to the first subparagraph, finds that the facts on which the designation of the undertakings providing core platform services as gatekeepers was based, have changed, it shall adopt a corresponding decision confirming, amending or repealing its previous decision designating the undertakings providing core platform services as gatekeepers which shall be made public.</td>
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<td><strong>ES (Comments):</strong></td>
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<tr>
<td>It would be advisable to have a single structured channel to systematically publish the public information and data referred to in the DMA, as a transparency tool.</td>
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Updated MS comments on ST 9971/21 - Presidency compromise text on DMA Proposal - ARTICLES (79 rows)

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<tr>
<th>Article 5 (Comments)</th>
<th>Obligations for Gatekeepers:</th>
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<tr>
<td>In respect of each of its core platform services identified pursuant to any the obligation should avoid any the malfunctioning of a service for the user and jeopardising their privacy.</td>
<td>Practices of Gatekeepers that limit contestability or are unfair.</td>
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<tr>
<td>Compliance with cybersecurity, consumer protection and product safety.</td>
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<tr>
<td>LU Article 5 (Comments): dafa of end-users, a gatekeeper shall, where applicable:</td>
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<tr>
<td>Where applicable, gatekeepers shall, where applicable:</td>
<td></td>
</tr>
<tr>
<td>In respect of each of its core platform services identified pursuant to any the obligation should avoid any the malfunctioning of a service for the user and jeopardising their privacy.</td>
<td></td>
</tr>
<tr>
<td>Practices of Gatekeepers that limit contestability or are unfair.</td>
<td>Chapter III</td>
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</tbody>
</table>
Not all obligations will apply to all gatekeepers. The proposed addition "where applicable" is a clarification to that end.

LT: as a general comments:
(Comments):

LT supports FI suggestion.

BE (Drafting): In respect of each of its core platform services referred to in each provision of this article and identified pursuant to Article 3(7), a gatekeeper shall:

BE (Comments):
BE: Some of these provisions do not apply to all CPS's and thus this proposal aims at clarifying this.

(Comments):

ES: Technical amendment: it is considered best to refer to an administrative decision.

(Comments):

ES: Proposal aims at clarifying this. Some of these provisions do not apply to all CPS's and thus this
44

**Updated MS comments on ST 9971/21**

**Presidency compromise text on DMA Proposal**

**ARTICLE (739 rows)**

<table>
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<tr>
<td>The obligation not to combine personal data shall penalise the gatekeeper's core platform service(s). Other services offered by the gatekeeper which do not create barriers to entry or which are not unfair shall not be subject to this obligation.</td>
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Furthermore, in order to be consistent with the GDPR, it is necessary to add paragraph (b) of Article 67(1) which refers to the necessity of a performance of a contract to allow processing of personal data. The scope of the GDPR and its available legal bases shall not be narrowed by the DMA.

EE supports the proposed amendments.

**Comments:**

EE by the DMA and in available legal bases shall not be narrowed by the GDPR. Article 67(1) which refers to the necessity of a performance of a contract to allow processing of personal data. The scope of the GDPR and its available legal bases shall not be narrowed by the DMA.

The obligation not to combine data shall penalise the gatekeeper’s core platform service(s). Other services offered by the gatekeeper which do not create barriers to entry or which are not unfair shall not be subject to this obligation.

![Updated MS comments on ST 9971/21 - Presidency compromise text on DMA Proposal - ARTICLES (739 rows)](image-url)
Where the end user has chosen a service based on a level of data combination, the end user shall have the option to choose a service not based on data combination, the latter service in question shall not differ except in the level of personalization resulting from the non-cumulation of personal data. Here, and provided consent in the sense of Regulation (EU) 2016/679, where updated MS comments on ST 9971/21 - Presidency compromise text on DMA Proposal - ARTICLES (739 rows) (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 services of the gatekeeper.

Comments:

LV

Gatekeepers must offer end users who do not consent to data combination an alternative service which is only different in the level of personalization resulting from non-cumulation of personal data. This alternative service must otherwise be identical.

Comments:

LV

Comments:

LV
This Article does not require gatekeepers to allow business users to offer different prices or conditions when the business user itself directly sells the product or service online. This can reduce consumer choice or increase prices and should therefore be covered by this Article.

LT (Comments):

EE

(c) allow business users to promote offers including under different conditions to end users acquired via the core platform service or through other channels, and to conclude contracts with these end users regardless of whether for that purpose they use the core platform services of the gatekeeper or not;

LT (Comments):

EE

(c) refrain from preventing or restricting business users from engaging in communication and concluding contracts with end users acquired via the core platform service or through other channels, including under different conditions, and to conclude contracts with these end users regardless of whether for that purpose they use the core platform services of the gatekeeper or not;

LT (Comments):
(c) refrain from unreasonably preventing or restricting end users to access and use, through the core platform services of the gatekeeper, the software application of a business user, whereby business users should not only be able to promote offers to end users that they have acquired through the gatekeeper services, but also to promote offers with “communication” features.

Concerning replacing “promoting offers” with “communication”. This might better correspond to the purpose of the clause as explained in recital 38, whereby business users should not only be able to promote offers to end users, but also enjoy comprehensive freedom in interacting with any end users that they have acquired through the gatekeeper services.
concerns about unfair behaviour by gatekeepers with any relevant
from introducing practices that would restrict end users from raising

(Comments):

EE

BE

BE suggests this amendment for more clarification.

(Comments):

EE

BE

handling mechanisms:
acceptable the terms of use including the use of lawful complaint-
to the right of business users and gatekeepers to lay down in their
any practice of gatekeepers, without prejudice
end users from raising issues with any relevant public authority, including
issues with any relevant public authority, including
(d) refrain from directly or indirectly preventing or restricting business

(Comment):

EE

BE

See first paragraph of the comment on 5(c).

(Comments):

EE

the core platform services of the gatekeeper:
acquired by the end users from the relevant business user without using
<table>
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<th>Article</th>
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<tr>
<td>(739 rows)</td>
<td>49 administrative or other public authorities.</td>
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<tr>
<td>(Drafting):</td>
<td>(d) refrain from preventing or restricting business users or end users from raising issues with any relevant public authority relating to any practice of gatekeepers.</td>
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<tr>
<td>(Comments):</td>
<td>LT supports that letter e only covers ID services, especially having in mind the broader scope of this letter (we are still analysing the inclusion of end-users).</td>
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<tr>
<td>(Comments):</td>
<td>End users must be free to raise issues with any relevant public authority relating to any practice of gatekeepers.</td>
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<td>(Drafting):</td>
<td>(f) refrain from requiring business users or end users to subscribe to or register with any other core platform services identified pursuant to Article 3 or which meets the thresholds in Article 3(2)(b) as a condition to access, sign up or register to any of their core platform services identified pursuant to that Article.</td>
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<td>(Comments):</td>
<td>BE (Drafting):</td>
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<td>(Comments):</td>
<td>LV</td>
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<tr>
<td>Article</td>
<td>Obligations for gatekeepers susceptible of being further specified under Article 7</td>
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<td>6</td>
<td>Article 6</td>
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<td>Obligation for gatekeepers:</td>
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<td></td>
<td>In respect of each of its core platform services identified pursuant to Article 3(7), a gatekeeper shall:</td>
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<td>1. Provide advertisers and publishers to which it supplies advertising services, upon their request and within one month following the request, with information concerning the price paid by the advertiser and with information concerning the price paid by the advertiser and services, upon their request and within one month following the request, for the publishing of a given ad and for each of the relevant advertising services provided by the gatekeeper, as well as the amount of remuneration paid to the advertiser, for the services provided by the gatekeeper.</td>
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<tr>
<th>Comments:</th>
<th>CZ</th>
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<tr>
<td>BE</td>
<td>we suggest to add this wording taken into account the objective of</td>
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<tr>
<td>(Comments):</td>
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<tr>
<td>LU</td>
<td>In respect of each of its core platform services identified pursuant to Article 3(7), taking into account of the need to protect the integrity, security, and quality of their services and the protection of personal data provided for in Article 3(7), a gatekeeper shall:</td>
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<tr>
<td>(Drafting):</td>
<td>LU</td>
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Updated MS comments on ST 9971/21 - Presidency compromise text on DMA Proposal - ARTICLES (739 rows)
1. In respect of each of its core platform services identified pursuant to Article 3(7), a gatekeeper shall:

- Ensure that
- All end-users, where applicable, data

(Comments:
- See above)

LT: If the first sentence of Art 5 will be amended as suggested by Pl, we believe, the same should be done in Art 6.)
We hereby think of the example where a gatekeeper marketplace could publicly available data that is generated through the activities of other business users of the core platform services of its competitors, including by the end users of these business users, or provided to its competitors, or by the end users of these business users, any data that is generated through the activities of other business users of the relevant core platform services of its business users or provided to its competitors.

Comments:

We wonder if it is not desirable to expand this provision in order to not allow a gatekeeper to use in competition with the business users of other business users data that is publicly available, which is generated through the activities of other business users of the relevant core platform services of its competitors, including by the end users of these business users, any data that is generated through the activities of other business users of the relevant core platform services of its business users or provided to its competitors.

Comments:

We hereby think of the example where a gatekeeper marketplace could publicly available data that is generated through the activities of other business users of the core platform services of its competitors, including by the end users of these business users, or provided to its competitors, or by the end users of these business users, any data that is generated through the activities of other business users of the relevant core platform services of its business users or provided to its competitors.

Comments:

We hereby think of the example where a gatekeeper marketplace could publicly available data that is generated through the activities of other business users of the core platform services of its competitors, including by the end users of these business users, or provided to its competitors, or by the end users of these business users, any data that is generated through the activities of other business users of the relevant core platform services of its business users or provided to its competitors.

Comments:

We hereby think of the example where a gatekeeper marketplace could publicly available data that is generated through the activities of other business users of the core platform services of its competitors, including by the end users of these business users, or provided to its competitors, or by the end users of these business users, any data that is generated through the activities of other business users of the relevant core platform services of its business users or provided to its competitors.

Comments:

We hereby think of the example where a gatekeeper marketplace could publicly available data that is generated through the activities of other business users of the core platform services of its competitors, including by the end users of these business users, or provided to its competitors, or by the end users of these business users, any data that is generated through the activities of other business users of the relevant core platform services of its business users or provided to its competitors.
| SE | Supports the amendment proposed in the compromise text. |
| SE (Comments): | |
| EE | Supports the amendment proposed in the compromise text. |
| EE (Comments): | |
| LT | Supports the amendment proposed in the compromise text. |
| LT (Comments): | |

**SE**: According to SE, the original proposed text is clearer and should be reintroduced.

**Comments**: 

- SE supports the amendment proposed in the compromise text.
- EE supports the amendment proposed in the compromise text.
- LT supports the amendment proposed in the compromise text.

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SE (Comments): 

<table>
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<th>(Drafting):</th>
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(9) allow end users to uninstall any pre-installed software.

---

LT (Comments): 

EE (Comments): 

Supports the amendment proposed in the compromise text.

---

Updated MS comments on ST 9971/21 - Presidency compromise text on DMA Proposal - ARTICLES (79 rows)
(c) allow and technically enable the installation and effective use and interoperability of third-party software applications of that operating system using or interoperating with operating systems of other gatekeepers and allow these software applications of software application stores to be accessed by means other than the core platform services of that gatekeeper.

LV (Drafting): This Article must state that the burden of proof that any restriction on uninstallation is essential must be on the gatekeeper.

(Comments): The right to uninstall apps should also explicitly be included for device manufacturers and device providers in order to promote competition and due to the fact that consumers rarely override pre-installed apps. This Article must state that the burden of proof that any restriction on uninstallation is essential must be on the gatekeeper.

(c) allow and technically enable the installation and effective use and interoperability of third-party software applications or software application stores using or interoperating with operating systems of other gatekeepers.

LV (Drafting): If technically be offered on a standalone basis by third-parties, functionalities of the operating system of the device and which cannot be achieved by other software applications then the gatekeeper can require such an un-installation in relation to software applications on its core platform service without prejudice to the obligations and duties of the gatekeeper.

(Comments): If the gatekeeper is required to uninstall any pre-installed network-s available for business users on the core platform service, then the gatekeeper can require such a change.

(Comments): SE has a question concerning why the obligation is formulated more narrowly.

LV (Comments): SE has a question concerning why the obligation is formulated more narrowly.

LV (Drafting): If technically be offered on a standalone basis by third-parties, functionalities of the operating system of the device and which cannot be achieved by other software applications then the gatekeeper can require such an un-installation in relation to software applications on its core platform service without prejudice to the obligations and duties of the gatekeeper.
applications or software application stores do not endanger the integrity of the hardware or operating system provided by the gatekeeper, provided that such proportionate measures are duly justified by the gatekeeper.

LU

The gatekeeper shall not be prevented from taking necessary and proportionate measures to ensure that third party software applications or software application stores do not endanger the protection of personal data, the integrity of the hardware or operating system provided by the gatekeeper, provided that such proportionate measures are duly justified by the gatekeeper;
The gatekeeper shall prompt the end user to decide whether the downloaded application or application store should become the default. The gatekeeper shall not be prevented from taking 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 where the gatekeeper can prove that such measures are necessary to safeguard the integrity of the hardware or operating system provided by the gatekeeper. The burden of proof shall be on the gatekeeper to demonstrate that any measures restricting installation are necessary and justified.

LV (Comments):

LV suggests this adding.

BE (Comments):

BE suggests this adding.
conditions to such ranking services or products of third parties. The conditions for selection must be non-discriminatory.

(b) Refrain from treating more favourably in ranking services and products offered by the gatekeeper itself or by any third party compared to similar services or products of third parties.

(d) Refrain from treating more favourably in ranking services and products offered by the gatekeeper itself or by any third party compared to similar services or products of third parties.

(b) Refrain from treating more favourably in ranking services and products offered by the gatekeeper itself or by any third party compared to similar services or products of third parties.

(Comments):

BE wonders if it is not desirable to also cover the preferential treatment of selected third parties.

(Comments):

BE wonders if it is not desirable to also cover the preferential treatment of selected third parties.
EE (Comments):
The current wording of this clause does not cover preferential treatment of selected third parties. While gatekeepers have a significantly greater incentive to conduct self-preferencing, there may be circumstances where a gatekeeper would be incentivized to give preferential treatment to certain third parties which, similarly to self-preferencing, would equally undermine contestability and fairness in offering particular products or services. In addition, the recitals 48 and 49, which are linked to this clause, should further clarify what would constitute unfair and discriminatory ranking. For example, personalized rankings of products listed on online marketplaces or elsewhere, which are ranked using prediction tools to provide results that may be most attractive to the end user, should not be deemed unfair or discriminatory (unless the prediction tool takes into account unfair or discriminatory parameters in determining its output). In addition, the recitals 48 and 49, which are linked to this clause, should refrain from technically restricting the ability of end users to switch between and subscribe to different software applications and services provided on the operating system of the gatekeeper.
<table>
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<tr>
<th>BE</th>
<th>Supports the proposal of amendment that was made by DE.</th>
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<td>(Comments):</td>
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<tr>
<td>LT</td>
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*Updated MS comments on ST 9971/21 - Presidency compromise text on DMA Proposal - ARTICLES (79 rows)*
Updated MS comments on ST 9971/21 - Presidency compromise text on DMA Proposal - ARTICLES (739 rows)

Updated MS comments on ST 9971/21 - Presidency compromise text on DMA Proposal - ARTICLES (739 rows)
The text should not define „anonymisation“ of personal data. This term should be added in this obligation.

Comments:

ES

The text should be added in this obligation.

Comments:

LU

The Regulation (EU) 2016/679 applies to personal data.

Comments:

ES

Regulation (EU) 2016/679 applies in such sharing with a consent in the sense of Article 6 of the Regulation (EU) 2016/679 and when the end user directly connected with the use effectuated by the end user in respect of the relevant core platform service are identified. The Regulation (EU) 2016/679 applies in such sharing with a consent in the sense of Article 6 of the Regulation (EU) 2016/679 and when the end user directly connected with the use effectuated by the end user in respect of the relevant core platform service are identified.

Comments:

ES

The DMA should not define „anonymisation“ of personal data. This term should be added in this obligation.

Comments:

ES

The DMA should not define „anonymisation“ of personal data. This term should be added in this obligation.

Comments:

ES

Regulation (EU) 2016/679 applies in such sharing with a consent in the sense of Article 6 of the Regulation (EU) 2016/679 and when the end user directly connected with the use effectuated by the end user in respect of the relevant core platform service are identified. The Regulation (EU) 2016/679 applies in such sharing with a consent in the sense of Article 6 of the Regulation (EU) 2016/679 and when the end user directly connected with the use effectuated by the end user in respect of the relevant core platform service are identified.

Comments:
modify the GDPR and create legal confusion. This is a very complex technical and legal field and the DMA is not the right instrument to define such concepts or go further than the GDPR.

apply fair and non-discriminatory general conditions of access for business users to its software application store designated pursuant to Article 3 of this Regulation. This is already an obligation for all platforms according to Article 7 of the GDPR.

refrain from making unsubscribing from a core platform service unnecessarily difficult or complicated for business users or end users. This is already an obligation for all platforms according to Article 7 of the GDPR: “It shall be as easy to withdraw as to give consent.”

Which recital explains what “unnecessarily difficult” means? It may mean something different to different people and is therefore not a legally certain concept.

LT supports MSs, which ask for more clarity.

LT

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LT (Comments):

In addition, we would welcome any change that would make regulatory dialogue an effective instrument, allowing technical explanation in order to achieve full compatibility. Furthermore, we believe for some of the certain circumstances regulatory dialogue will be necessary in order to preserve the Commission's discretion to specify, but also recognise in the cases of optimal solutions or business models affected by Article 6 obligations, attempts to comply with these obligations in good faith have to feature.

We therefore support the proposals forwarded by Denmark which for Article 7 to work effectively thereby encouraging maximum compliance with obligations for gatekeepers.

CZ (Comments):

We therefore support the proposals forwarded by Denmark which for Article 7 to work effectively thereby encouraging maximum compliance with obligations for gatekeepers.

IE (Comments):

For Article 7 to work effectively, thereby encouraging maximum compliance with obligations for gatekeepers, the heterogeneity of business models affected by Article 6 obligations and attempts to comply with these obligations in good faith have to feature. We therefore support the proposals forwarded by Denmark.
As an alternative option to the proposal in the chapitre of Articles 5 and 6.

Comments:

The measures implemented by the gatekeeper to ensure compliance with the obligations laid down in Articles 5 and 6 shall be necessary for and effective in achieving the objectives of the Regulation. The gatekeeper shall ensure that these measures take account of the need to protect the integrity, security, and quality of their services and are implemented in compliance with applicable law, in particular Regulation (EU) 2016/679 and Directive 2002/58/EC, and with legislation on cyber security, consumer protection and product safety.

Comments:

CZ thinks that “regulatory dialogue” (par. 4) could be further strengthened and made more effective; for example, different business models of gatekeepers could be taken into account.

EE supports the proposal on Article 7 presented by DK. The DK proposal enhances the role of regulatory dialogue and thereby elevates compliance of gatekeepers with Article 6 obligations, while preserving Commission’s discretion in deciding when further specification should be provided, achieving a better balance than the existing compromise text.

Comments:

EE (Drafting):

The measures implemented by the gatekeeper to ensure compliance with the obligations laid down in Articles 5 and 6 shall be necessary for and effective in achieving the objectives of the Regulation. The gatekeeper shall ensure that these measures take account of the need to protect the integrity, security, and quality of their services, and are implemented in compliance with applicable law, in particular Regulation (EU) 2016/679 and Directive 2002/58/EC, and with legislation on cyber security, consumer protection and product safety.

Comments:

As an alternative option to our proposal on the chapitre of Articles 5 and 6,
Updated MS comments on ST 9971/21 - Presidency compromise text on DMA Proposal - ARTICLES (79 rows)

| Article 18. | Where the Commission finds that the measures that the gatekeeper intends to implement pursuant to Article 18 and by decision adopted in accordance with the advisory procedure referred to in Article 37a(2) specify the measures that the gatekeeper concerned shall implement, the Commission shall adopt a decision pursuant to this paragraph explaining why the measures intended to implement or had implemented by the gatekeeper do not ensure effective compliance with the relevant obligations laid down in Article 6. It may open proceedings pursuant to Article 18.

| Comments: | We propose to include a reference to the need for gatekeepers to consider security and user concerns. In Article 1(1), it is important that services remain competitive, secure and user-friendly. A safe, functioning and beneficial service requires that users continue to benefit from a safe, functioning and secure service.

*LU (Drafting):*

| Provision may also be placed in paragraph 7.

| Provision: | The measures to implement the obligations in Article 6 are effective. The gatekeeper shall be allowed to submit explanations as to why the measures intended to implement or had implemented by the gatekeeper do not ensure effective compliance with the relevant obligations laid down in Article 6.

| Comments: | The gatekeeper shall be allowed to submit explanations as to why the measures intended to implement or had implemented by the gatekeeper do not ensure effective compliance with the relevant obligations laid down in Article 6.
3. Paragraph 2 of this Article is without prejudice to the powers of the Commission under Articles 25, 26 and 27.

4. In view of adopting the decision under paragraph 2, the Commission shall communicate its preliminary findings within three months from the opening of the proceedings. In the preliminary findings, the Commission shall explain the measures it considers to take or it considers that the provider of core platform services concerned should take in order to effectively address the preliminary findings.

Interested third parties shall be able to provide comments on the preliminary findings. In the preliminary findings of paragraphs of the decision, the Commission shall communicate its preliminary findings within three months from the opening of the proceedings. In the preliminary findings, the Commission shall explain the measures it considers to take or it considers that the provider of core platform services concerned should take in order to effectively address the preliminary findings. Interested third parties shall be able to provide comments on these preliminary findings. In the preliminary findings, the Commission shall explain the measures it considers to take or it considers that the provider of core platform services concerned should take in order to effectively address the preliminary findings. Interested third parties shall be able to provide comments on the preliminary findings.

In addition, we would welcome that a decision under Art 7.2 could also be reversed, as it is done with a decision to designate a gatekeeper (Art 4).
<table>
<thead>
<tr>
<th>(Comments):</th>
<th>Czech welcomes the introduction of involvement of third parties.</th>
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<tr>
<td>(Comments):</td>
<td>CZ supports this addition but would like to know how third parties can contribute to the implementation of the obligations.</td>
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<tr>
<td>(Comments):</td>
<td>We would support a more developed consultation on which involvement is necessary.</td>
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<tr>
<td>(Comments):</td>
<td>We would welcome the involvement of third parties in the regulatory dialogue.</td>
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<tr>
<td>(Comments):</td>
<td>BE welcomes the amendment that interested third parties shall be involved in the regulatory dialogue.</td>
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<tr>
<td>(Comments):</td>
<td>LT welcomes the amendment that interested third parties shall be involved in the regulatory dialogue.</td>
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<tr>
<td>(Comments):</td>
<td>In specifying the measures under paragraph 2, the Commission shall ensure that the measures are effective in achieving the objectives of the relevant obligations and proportionate in the specific circumstances of the case. In any case, the Commission shall take such comments into account when taking a decision.</td>
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</table>

Updated MS comments on ST 9971/21 - Presidency compromise text on DMA Proposal - ARTICLES (739 rows)
In specifying the measures under paragraph 2, the Commission shall ensure that the measures are effective in achieving the objectives of the relevant obligation and proportionate in the specific circumstances of the gatekeeper and the relevant service.

Comments:

LT suggests adding a general safeguard:

"The measures should take into account security, functionality and integrity of the services provided by the gatekeeper and the relevant service."

LT (Drafting):

In specifying the measures under paragraph 2, the Commission shall ensure that the measures are effective in achieving the objectives of the relevant obligation and proportionate in the specific circumstances of the gatekeeper and the relevant service. The measures should take into account security, functionality and integrity of the services provided by the gatekeeper.

Comments:

LT:

That end.

The measures always need to be checked against achieving the objectives of the relevant obligation. They need not only be effective but also necessary to achieve the objectives of the relevant obligation.

Comments:

LT:

In specifying the measures under paragraph 2, the Commission shall ensure that the measures are effective in achieving the objectives of the relevant obligation and proportionate in the specific circumstances of the gatekeeper and the relevant service.
For the purposes of specifying the obligations under Article 6(1) points (j) and (k), the Commission shall also assess whether the intended or implemented measures ensure that there is no remaining imbalance of rights and obligations on business users and that the measures do not confer an advantage on the gatekeeper which is disproportionate to the service provided by the gatekeeper.

A gatekeeper may request the opening of proceedings pursuant to Article 18 for the Commission to determine whether the measures that the gatekeeper intends to implement or has implemented under Article 6 are effective in achieving the objective of the relevant obligation in the specific circumstances. A gatekeeper shall, with its request, provide a reasoned submission to explain in particular why the measures that it intends to implement or has implemented are effective in achieving the objective of the relevant obligation in the specific circumstances.

The Commission may open proceedings pursuant to Article 18 and by decision adopted in accordance with the advisory procedure referred to in Article 37a(2) specify the measures that the gatekeeper concerned shall implement. The Commission shall adopt a decision pursuant to this provision within six months from the opening of proceedings pursuant to Article 18.
Where the suspension is granted pursuant to paragraph 1, the Commission may, acting on a reasoned request by a gatekeeper, exceptionally suspend, in whole or in part, a specific obligation laid down in Articles 5 and 6 for a core platform service identified pursuant to Article 3(7) by decision adopted in accordance with the advisory procedure referred to in Article 32(4), where the gatekeeper demonstrates that compliance with that specific obligation would endanger, due to exceptional circumstances beyond the control of the gatekeeper in the Union, and only to the extent necessary to address such threat to its economic viability in the Union, the economic viability of the operation of the gatekeeper in the Union, and only to the extent necessary to address such threat to its economic viability in the Union. The Commission shall aim to adopt the suspension decision without delay and at the latest 3 months following receipt of a complete reasoned request. The Commission shall annually adopt the suspension decision, and only to the extent necessary to address such threat to its economic viability. The Commission shall review its suspension decision every year following receipt of a complete reasoned request. The suspension decision shall be accompanied by a reasoned statement explaining the grounds for the suspension.

IE

Statement is required on the grounds of transparency.

IE

Reasoned statement explaining the grounds for the suspension.

IE

(Comments):

IE

(Comments):

IE

(Comments):

IE

(Comments):

IE

(Comments):

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(Comments):
In assessing the request, the Commission shall take into account in particular the impact of the compliance with the specific obligation on the economic viability of the operation of the gatekeeper in the Union as well as on third parties. The suspension may be made subject to conditions and obligations to be defined by the Commission in order to ensure a fair balance between these interests and the objectives of this Regulation. Such a request may be made and granted at any time pending the assessment of a request pursuant to paragraph 1.

### Drafting:

In assessing the request, the Commission shall take into account in particular the impact of the compliance with the specific obligation on the economic viability of the operation of the gatekeeper in the Union as well as on third parties. The suspension may be made subject to conditions and obligations to be defined by the Commission in order to ensure a fair balance between these interests and the objectives of this Regulation. Such a request may be made and granted at any time pending the assessment of a request pursuant to paragraph 1.

### Comments:

To ensure consistency with Article 8(1)

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<td>When it intends to lift the suspension, the Commission shall present a revised reasoned request.</td>
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The Commission may, acting on a reasoned request by a gatekeeper or on its own initiative, by decision adopt in accordance with Regulation (EU) No 2016/679:

1. The previous reference to "overriding reasons of public interest" should be deleted. We therefore propose to delete this which would move away from objective considerations. We therefore propose to delete this.

The CJEU caselaw defines what is to be understood as public interests. These can be quite wide-ranging but do not include public morality. While the CJEU caselaw defines what is to be understood as public interests.

(A) Comments:

ES

1. This opens the door to political interpretations which would move away from objective considerations. We therefore propose to delete this.

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(A) Comments:

LU

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**Updated MS comments on ST 9971/21 - Presidency compromise text on DMA Proposal**

**ARTICLE S**

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**Ecommerce Directive**:

What would be consistent with some related regulation as the EU would be better referring to "public polity" instead of "public morality".

(Comments):

ES

See above

(Comments):

IE
**Updated MS comments on ST 9971/21 - Presidency compromise text on DMA Proposal**

**ARTICLE S**

(Comments): The scope of the exemption provision we feel is too narrow. A wider scope here with the Commission retaining full discretion we feel would be more appropriate.

3. In cases of urgency, the Commission may, acting on a reasoned request by a gatekeeper or on its own initiative, provisionally suspend the application of the relevant obligation to one or more individual core platform services already prior to the decision pursuant to paragraph 1.

LT welcomes suggestions to ensure transparency. However, we are still not convinced of the added value in relation to proportionality.

LTIE (Comments): LTIE welcomes suggestions to ensure transparency. However, we are still analyzing Art 9a (together with a corresponding recital 58a) and its added value in relation to proportionality. As for the first level of the reporting mechanism, we feel the Commission might end up with a huge amount of transparency reports, stemming from different legal acts (DMA, DSA), which at the end of the day will not be helpful and go with a huge amount of unnecessary reports. Meaning from paragraph 2, the scope of the exemption provision we feel is too narrow. A wider and more applicable scope here with the Commission retaining full discretion we feel would be more appropriate.
76

1. Within six months after its designation pursuant to Article 3, and in application of Article 3(8), the gatekeeper provides the Commission with a report describing in a detailed, comprehensible and transparent manner the measures implemented to ensure compliance with Articles 5 and 6. This report shall be updated at least annually.

Comments:

The purpose of this Article might be confusing. It is not clear whether the aim is to facilitate the monitoring and control of the Commission or if it is to improve the information to third parties.

Provided that both aims would be relevant in terms of an efficient implementation of the DMA, it would be strongly advisable to include a reference to this report in Article 7.

The second level of the reporting mechanism: we would like to have more information on how the Cion expects the publicly available non-confidential reports to look like. Will the statement that a company x now allows data portability, as required by Art 5/6, will be enough? If not, the company might be required to disclose business secrets if more detailed information will be required. Clearly, if this is the case, the Commission might be required to disclose business secrets as well. If not, the company might be required to disclose business secrets as well. It would help if we could express the priority of how the Commission will use this information on the second level of the reporting mechanism.

Updated MS comments on ST 9971/21 - Presidency compromise text on DMA Proposal - ARTICLES (79 rows)
b) Refer the transparency obligation to a summary (intended for the common public) and a non-confidential version of the report that was sent to the COM (intended for technical consultation).

c) Create a single structured channel to systematically publish the public information and data referred to the DMA, as a transparency tool (see ES proposal on Article 34).

Besides, it should be set that the GK shall provide the report:

(4) Create a single structured channel to systematically publish the

(e) Create a single structured channel to systematically publish the

was sent to the COM (intended for technical consultation).

(b) Refer the transparency obligation to a summary (intended for the

PRESIDENCY compromise text on DMA Proposal - ARTICLES (739 rows)
Additional suggestions, especially regarding Art 10 a-f, at the later stage:

Therefore, LT reserves the right to provide more comments and objections, including further conditionals, if used.

Art 10 - Updating obligations for gatekeepers

LU (Comments):

We generally support the modifications made to this Article in the Presidency work document from 9th July 2021. It is important to clearly frame the delegation of powers to the Commission in order to avoid any risk of the DMA without proper legislative process. The most concerning aspects: possibility to add new practices (as mentioned by SK) without proper legislative process. The most concerning aspects: possibility to add new practices (as mentioned by SK) without proper legislative process. Therefore, LT reserves the right to provide more comments and suggestions, especially regarding Art 10 a-f, at the later stage.

CZ (Comments):

LT - evidence: necessary preparatory work such as impact assessments and market evidence needed by way of delegated acts. For example, new obligations cannot be introduced via such delegated acts.

We generally support the modifications made to this Article in the

Article 10

Updated MS comments on ST 9971/21 - Presidency compromise text on DMA Proposal - ARTICLES (739 rows)
The Commission is empowered to adopt delegated acts in accordance with Article 37 to update, supplement or amend the obligations laid down in Articles 5 and 6 where, based on the basis of a market investigation pursuant to Article 17, it has identified:

1. the need to update those obligations that are unfair in the same way as the practices addressed by the obligations laid down in Articles 5 and 6, or
2. the need to update those obligations that limit the contestability of core platform services or that are unfair in the same way as the practices addressed by the obligations laid down in Articles 5 and 6.
Updated MS comments on ST 9971/21 - Presidency compromise text on DMA Proposal - ARTICLES (739 rows)

Comments:

SE

IE

that one or more of those obligations are no longer warranted or

need to be narrowed,

IE

That the link between Articles 10 and 17 needs to be strengthened to say the

IE

The Commission is empowered to adopt delegated acts in accordance with

Comments:

SE

Drafting:

SE

consider that those obligations are no longer warranted.

In order to fully implement the delegated act process the Commission

The link between Articles 10 and 17 needs to be strengthened to say the

Comments:

SE

that one or more of those obligations are no longer warranted or

IE

The Commission is empowered to adopt delegated acts in accordance with

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The link between Articles 10 and 17 needs to be strengthened to say the

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IE

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In order to fully implement the delegated act process the Commission

The link between Articles 10 and 17 needs to be strengthened to say the

Comments:

SE

that one or more of those obligations are no longer warranted or

IE

The Commission is empowered to adopt delegated acts in accordance with
According to SE obligations should be able to be removed by delegated acts.

**ES**

1. The Commission is empowered to adopt delegated acts in accordance with Article 74 in order to implement or amend, within the original purpose of the obligations laid down in Articles 5 and 6, the existing obligations laid down in Articles 3 and 56.

2. These amendments shall apply to all designated gatekeepers.

**ES**

These amendments shall apply to all designated gatekeepers.

**Drafting:**

In any case, it is important that the new wording clearly sets that the original purpose of the obligation shall be respected.

The new wording allows introducing a future proof clause, providing the necessary clarifications regarding the possibility for the Commission to redefine the way to implement the obligation, while maintaining their original purpose/aim.

In any case, it is important that the new wording clearly sets that the

**Comments:**

New wording on Article 10 is highly welcome to the extent that it solves the legal concerns on the compatibility with the Treaties of the previous version - an issue that was subject to clarification by the Council Legal Service.

The new wording allows introducing a future proof clause, providing the possibility for the Commission to redefine the way to implement the obligation, while maintaining their original purpose/aim.

In any case, it is important that the new wording clearly sets that the original purpose/aim of the obligation should be respected.
A delegated act which supplements the obligations in accordance with the first subparagraph shall be limited to:

1. The extension of an obligation that applies only to certain core platform services, to other core platform services listed in Article 2 point 2; or the restriction of an obligation that applies to all core platform services only to one or some core platform services.

2. If it is possible to extend an obligation that applies only to certain core platform services, it should be also possible to restrict an obligation to certain CPS. This provision would be needed in order to solve the problems that may arise when applying obligations that were not thought for specific CPS.

**If there is any doubt on the legal compatibility of the proposed amendment, an explanation of the CLS would be appreciated.**

**Drafting:**

If it is possible to extend an obligation that applies only to certain core platform services, it should be also possible to restrict an obligation to certain CPS. This provision would be needed in order to solve the problems that may arise when applying obligations that were not thought for specific CPS.

**Comments:**

If it is possible to extend an obligation that applies only to certain core platform services, it should be also possible to restrict an obligation to certain CPS. This provision would be needed in order to solve the problems that may arise when applying obligations that were not thought for specific CPS.

**If there is any doubt on the legal compatibility of the proposed amendment, an explanation of the CLS would be appreciated.**

**Drafting:**

If there is any doubt on the legal compatibility of the proposed amendment, an explanation of the CLS would be appreciated.
endangered;

the hardware or operating system provided by the gatekeeper is not

(ES)

Drafting:

the extension of obligations the possibility of the gatekeeper to

(ES)

ES

[⋯ (p)]

Preventing their circumvention;

improving the effectiveness of the application of those obligations and
gatekeepers under Articles 5 and 6 are to be performed with a view to

the specification of the manner in which the obligations of

(ES)

(Comments):

If there is any doubt on the legal compatibility of the proposed

other, it should be also possible to act on the opposite direction.

If it is possible to extend an obligation that applies only to certain users to

business users or end users identified as beneficiaries and

users or end users as beneficiaries, to other subsets of business

business users or end users as beneficiaries, to other subsets of business

the extension of an obligation where it identifies a subset of

Drafting:

the extension of an obligation where it identifies a subset of

ES

ES

business users or end users as beneficiaries and

business users or end users as beneficiaries, to other subsets of business

the extension of an obligation where it identifies a subset of
A delegated act which amends the obligations in accordance with the first subparagraph shall be limited to the amendment of non-essential elements of the obligation, without its aim being altered in any case.

A delegated act that modifies the obligations in accordance with the first paragraph shall be limited to the modification of non-essential elements of the obligation, without its aim being altered in any case.

A practice can be unfair or limit the contestability of core platform services where:

1. A practice as referred to in paragraph 1 shall be considered to be unfair or limit the contestability of core platform services where:
   - there is an imbalance of rights and obligations between business users or end users and the gatekeeper in providing services;
   - the gatekeeper is obtaining an advantage from business users or end users that is disproportionate to the service provided by the gatekeeper to business users or end users;
   - the contestability of markets is weakened as a consequence of such a practice.

2. A practice as referred to in paragraph 1 shall be considered to be unfair or limit the contestability of core platform services where:
   - there is an imbalance of rights and obligations between business users or end users and the gatekeeper.

The Commission must also be empowered to update the obligations in Articles 5 and 6 in the case of an imbalance between the rights and obligations of end users and gatekeepers, as well as business users and gatekeepers.
| **(a)** | there is an imbalance between the rights and obligations of business users and the gatekeeper obtains an advantage from business users that is disproportionate to the service provided by that gatekeeper to those business users; or |
| **(b)** | the contestability of markets is weakened as a consequence of such a practice engaged in by gatekeepers and affects or risks affecting the contestability of a core platform service or other services in the digital sector on a lasting basis due to the creation or strengthening of barriers for other operators to enter or expand as suppliers of a core platform service or other services in the digital sector or prevents other operators from having the same access to a key input as the gatekeeper, and it is thus capable of impeding innovation and limiting choice for business users and end users. |

| **CZ** | would like to clarify the meaning of the term “key input” and whether it should be specified in guidelines or other soft law. |
| **SE** | has a question about the background of this amendment and what it means in relation to the original proposal. |

**Article 11**

Anti-circumvention

1. A gatekeeper shall ensure that the obligations of Articles 5 and 6 are fully and effectively complied with. While the obligations of Articles 5 and 6 apply in respect of core platform services designated pursuant to Article 3 (7), their implementation shall not be undermined by any behaviour of the undertaking to which the gatekeeper belongs, regardless of whether this behaviour is of a contractual, commercial, technical or any other nature.

**Comments:**

- CZ
  - Would like to clarify the meaning of the term “key input” and whether it should be specified in guidelines or other soft law.

- SE
  - Has a question about the background of this amendment and what it means in relation to the original proposal.
of the undertaking to which the gatekeeper belongs, regardless of whether this behaviour is of a contractual, commercial, technical or any other nature, including through product design or by presenting end user choices in a non-neutral manner, or by otherwise subverting or impairing user autonomy, decision-making, or choice via the structure, function or manner of operation of a user interface or a part thereof.

LV

(Comments):

Gatekeepers have spent lots of resources on optimizing interface design and other choice architecture techniques to influence how consumers behave.

It is therefore essential to explicitly prohibit the use of techniques that use carefully designed choice architecture which lead consumers them to take actions in the interests of the gatekeeper rather than in their own interests.

| 2. | Where consent for collecting and processing of personal data is required to ensure compliance with this Regulation, a gatekeeper shall take the necessary steps to either enable business users to directly obtain the required consent to their processing, where required under Regulation (EU) 2016/679 and Directive 2002/58/EC, or to comply with Union data protection and privacy rules and principles in other ways including by providing business users with duly anonymised data where appropriate. The gatekeeper shall not make the obtaining of this consent by the business user more burdensome than for its own services. |
| 3. | A 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 and 6, or make the exercise of those rights or choices unduly difficult.

(Drafting):
3. A 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 and 6, or make the exercise of those rights or choices unduly difficult.

(Comments):
Gatekeepers have spent lots of resources on optimizing interface design and other choice architecture techniques to influence how consumers behave. It is therefore essential to explicitly prohibit the use of choice architectures that lead consumers to take actions in the interests of the gatekeeper rather than in their own interests.

(Obligation to inform about concentrations)

Article 12
Obligation to inform about concentrations

(Comments):
LT. As a general remark, we could support compromise text as it is and LT.
### Comments

**CZ** supports changes in this Article; however, we still think that the relationship between notification in this Article of DMA and notification procedure under Regulation 139/2004 should be clarified.

**FI** regards Article 12 and would not support any further expansion of this clause. Finland supports remaining close to the original Commission proposal as regards Article 12 and would not support any further expansion of this clause.

**EE** supports remaining close to the original Commission proposal as regards Article 12 and would not support any further expansion of this clause.

**EE** supports remaining close to the original Commission proposal as regards Article 12 and would not support any further expansion of this clause.

**FR** considers that removing the words "involving another provider of core platform services or of any other services provided in the digital sector" proposed by FR would excessively broaden the scope of the obligation imposed by the article. The obligation should be in line with the overall objective of the DMA, i.e. contributing to the proper functioning of the internal market in the digital sector.

**EE** considers that removing the words "involving another provider of core platform services or of any other services provided in the digital sector" proposed by FR would excessively narrow the scope of the obligation imposed by the article. The obligation should be in line with the overall objective of the DMA, i.e. contributing to the proper functioning of the internal market in the digital sector.

**CZ** supports changes in this Article; however, we still think that the relationship between notification in this Article of DMA and notification procedure under Regulation 139/2004 should be clarified.
As well as a list of the Member States concerned by the operation, there is an obligation for merger control. If there is no possibility to stop the merger, the notification deadline is disproportionate since the notification is unnecessary before considering such concentrations.

The notification pursuant to paragraph 1 shall at least describe for the acquisition targets the parties to the concentration, their EEA and worldwide annual turnover, their field of activity, including activities directly related to the concentration, the turnover or an estimation thereof, as well as a list of the Member States concerned by the operation.

The agreement, the announcement of the public bid, or the acquisition of a controlling interest.

Comments:

We suggest deleting the notification deadline since it could have a negative effect on concentrations. As a result of the amendment proposed in the compromise text, there is a two-month waiting period after the contract is concluded and the concentration is implemented. Gatekeepers must inform of the concentration after it is concluded and provide detailed information. The concentration cannot be implemented before the two-month period has passed, because otherwise it would infringe this Regulation. This could have unforeseeable negative consequences, especially hindering startups from exiting the market and creating an unreasonable barrier for concluding such concentrations.

We suggest deleting the notification deadline since it could have a negative effect on concentrations.
The field of activity has to be the digital sector, given the scope of the Digital Service Act (DSA). This is because the digital sector includes activities related to the DSA. The exact activities seem to be most relevant in this notification.

EE (Comments):
It is important to ensure that the obligation to inform about concentrations would remain purposeful. That is, it should be absolutely clear what is the value of each type of information required under this clause, in order not to create excessive administrative burden in mergers and acquisitions in the digital sector. This would mean a significant impact on the field of concentration, including activities related to the DSA. The field of activity has to be the digital sector, given the scope of the DSA. The exact activities seem to be most relevant in this notification.
<table>
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<th><strong>3. If, following any concentration as provided in paragraph 1, the rationale of the concentration is required twice,</strong></th>
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The notification shall also describe, for any relevant core platform services, their respective EEA annual turnover, their number of yearly active business users and the number of monthly active end users, as well as the rationale of the intended concentration. The rationale of the concentration is required twice.
Within six months after its designation pursuant to Article 3, a gatekeeper shall submit to the Commission an independently audited description of any techniques for profiling of consumers that the gatekeeper applies to any service offered to consumers. This description shall be updated at least annually.

LV (Drafting):

1. Within six months after its designation pursuant to Article 3, a gatekeeper shall submit to the Commission an independently audited description of any techniques for profiling of consumers that the gatekeeper applies to any service offered to consumers. This description shall be updated at least annually.

LV (Comments):

The audit obligation should not be limited to core services of the gatekeeper but must apply to all services of the gatekeeper that involve additional core platform services individually satisfying the thresholds in point (b) of Article 3(2). The audit obligation shall not be limited to core services of the gatekeeper.

The Commission shall inform the Member States of any notification received pursuant to paragraph 1 and publish a summary of the concentration, specifying the parties to the concentration, their field of activity, the nature of the concentration and the list of the Member States concerned by the operation. The Commission shall take account of the legitimate interest of undertakings in the protection of their business secrets.

Article 13

Obligation of an audit

Within six months after its designation pursuant to Article 3, a gatekeeper shall submit to the Commission an independently audited description of any techniques for profiling of consumers that the gatekeeper applies to any service offered to consumers. This description shall be updated at least annually.
### Article 14

**Market investigation**

### Chapter IV

#### Market investigation

1. When the Commission intends to carry out a market investigation in view of the possible adoption of decisions pursuant to Articles 15, 16 and 17, it shall adopt a decision opening a market investigation.

2. The opening decision shall specify:

(a) the date of opening of the investigation.

The gatekeeper makes publicly available an overview of the audited description taking into account the limitations imposed by the requirements of business secrecy. The description and its publicly available overview shall be updated at least annually.

### (Drafting):

The gatekeeper makes publicly available an overview of the audited description taking into account the limitations imposed by the requirements of business secrecy. The description and its publicly available overview shall be updated at least annually.

### (IE)

Profiling of consumers since these services can fall within the scope of the DMA (e.g. Article 5(a) – any other service offered by the gatekeeper)
### Article 15

Market investigation for designating gatekeepers

1. The Commission may conduct a market investigation for the purpose of examining whether a provider of core platform services undertaking should be designated as a gatekeeper pursuant to Article 3(6), or in order to identify core platform services for a gatekeeper pursuant to Article 3(7). It shall endeavour to conclude its investigation by adopting a decision in accordance with the advisory procedure referred to in Article 32(4) within twelve months from the opening of the market investigation in accordance with the advisory procedure referred to in Article 37a(2).

#### (Drafting):

1. The Commission may conduct a market investigation for the purpose of examining whether a provider of core platform services undertaking should be designated as a gatekeeper pursuant to Article 3(6), or in order to identify core platform services for a gatekeeper pursuant to Article 3(7). It shall endeavour to conclude its investigation by adopting a decision in accordance with the advisory procedure referred to in Article 32(4) within twelve months from the opening of the market investigation in accordance with the advisory procedure referred to in Article 37a(2).

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<td>The obligations on the Commission shall be as legally clear as possible. It is not clear why obligations regarding process shall be as clear or firm on the Commission. Once the Commission conducts a market investigation pursuant to paragraph 1, the Commission shall endeavour to communicate its preliminary findings to the provider of core platform services concerned within six months from the opening of the investigation. In the preliminary findings, the Commission shall explain whether it considers an eventual recommendation to designate the provider of core platform services concerned as a gatekeeper pursuant to Article 3(6).</td>
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<td><strong>CZ (Comments):</strong></td>
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<td><strong>LT (Comments):</strong></td>
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<td><strong>LU (Drafting):</strong></td>
<td>In the course of a market investigation pursuant to paragraph 1, the Commission shall endeavour to communicate its preliminary findings to the provider of core platform services concerned within six months from the opening of the investigation. In the preliminary findings, the Commission shall explain whether it considers an eventual recommendation to designate the provider of core platform services concerned as a gatekeeper pursuant to Article 3(6).</td>
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<td>Updated MS comments on ST 9971/21 - Presidency compromise text on DMA Proposal - ARTICLES (739 rows)</td>
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the thresholds set out in Article 3(2), but has presented the provider of core platform services with details of the investigation within six months from the opening of the investigation. The Commission shall explain whether it considers, on a provisional basis, whether the provider of core platform services concerned should be designated as a gatekeeper pursuant to Article 3(6).

### LT

**(Comments):**

LT in our opinion, a reference to the one of the grounds on which market investigation by a decision pursuant to paragraph 1. In that case the investigation should be concluded to consider the provider of core platform services concerned with six months from the opening of the investigation. The Commission shall explain whether it considers, on a provisional basis, whether the provider of core platform services concerned should be designated as a gatekeeper pursuant to Article 3(6).
Commission shall endeavour to communicate its preliminary findings pursuant to paragraph 2 to the provider of core platform services undertaking within three months from the opening of the investigation.

Where the provider of core platform services undertaking satisfies the thresholds set out in Article 3(2), but is not precluded from further market investigation, the Commission shall only decide applicable those obligations that are appropriate and necessary to prevent the gatekeeper concerned efficient, non-durable position in its operations. The Commission shall review such a gatekeeper concerned efficiencies by which means an entrenched and durable position in its operations. The Commission shall only decide applicable those obligations that are appropriate and necessary to prevent the gatekeeper concerned efficient, non-durable position in its operations. The Commission shall only decide applicable those obligations that are appropriate and necessary to prevent the gatekeeper concerned efficient, non-durable position in its operations.

When the Commission pursuant to Article 3(6) designates as a gatekeeper a provider of core platform services undertaking that does not yet enjoy entrenched and durable position in its operations, but it is foreseeable that it will enjoy such a position in the near future, it shall declare applicable to that gatekeeper only obligations laid down in Article 5(b) and (d) and Article 6(1) points (e), (f), (h) and (i) as specified in the designation decision. The Commission shall declare applicable those obligations that are appropriate and necessary to prevent the gatekeeper concerned efficient, non-durable position in its operations.

LT could support DE remark about more proper placement of this para.

4. Where the Commission pursuant to Article 3(6) designates as a gatekeeper a provider of core platform services undertaking that does not yet enjoy entrenched and durable position in its operations, but it is foreseeable that it will enjoy such a position in the near future, it shall declare applicable to that gatekeeper only obligations laid down in Article 5(b) and (d) and Article 6(1) points (e), (f), (h) and (i) as specified in the designation decision. The Commission shall only declare applicable those obligations that are appropriate and necessary to prevent the gatekeeper concerned efficient, non-durable position in its operations. The Commission shall review such a gatekeeper concerned efficiencies by which means an entrenched and durable position in its operations.
For a holistic assessment to take place, the provider should be in a position to express its views during the investigation.

(Comments):

IE express its views, it is foreseeable that it will enjoy such a position in position in its operations, but, after giving the provider the possibility to

The Commission shall review such a designation in accordance with the procedure laid down in Article 4.

(Drafting):

IE clauses of "future gatekeepers" can be reviewed every 2 years. When the Commission pursuant to

When the Commission pursuant to Article 3(6) designates as a gatekeeper an provider of core platform services that does not yet enjoy an entrenched and durable

As to the last sentence, "The Commission shall review such a designation in accordance with the procedure laid down in Article 4.

Updated MS comments on ST 9971/21 - Presidency compromise text on DMA Proposal - ARTICLES (79 rows)
### Article 16

**Market investigation into systematic non-compliance**

**1.** The Commission may conduct a market investigation for the purpose of examining whether a gatekeeper has engaged in systematic non-compliance.

Where the market investigation shows that a gatekeeper has systematically infringed one or several of the obligations laid down in Articles 5 and 6 and further strengthened or extended its gatekeeper position in relation to the characteristics under Article 3(1), the Commission may by decision adopted in accordance with the advisory procedure referred to in Article 32(4) impose any structural remedies which are proportionate to the infringement committed and necessary to ensure compliance with this Regulation.

The Commission shall conclude its investigation by adopting a decision within twelve months from the opening of the market investigation.

**2.** The Commission may only impose structural remedies pursuant to Article 32(4) where any equally effective behavioural remedy would be more burdensome for the gatekeeper concerned than the behavioural remedy.

**3.** A gatekeeper shall be deemed to have engaged in a systematic non-compliance if:

- LT welcomes that both conditions to declare systematic non-compliance are left in the text.
- Article 16 welcomes LT's comments on ST 9971/21 - Presidency compromise text on DMA Proposal - ARTICLES (739 rows).
4. A gatekeeper shall be deemed to have further strengthened or extended its gatekeeper position in relation to the characteristics under Article 3(1), where its impact on the internal market has further increased, its importance as a gateway for business users has further increased or the gatekeeper enjoys a further entrenched and durable position in its operations.

5. The Commission shall communicate its objections to the gatekeeper concerned within six months from the opening of the investigation. In its objections, the Commission shall explain whether it preliminarily considers that the conditions of paragraph 1 are met and which remedy or remedies it preliminarily considers necessary and proportionate.

6. The Commission may at any time during the market investigation extend its duration. The total duration of any extension of extensions pursuant to this paragraph shall not exceed six months. The Commission may consider commitments pursuant to Article 23 and make them binding in its decision.

Updated MS comments on ST 9971/21 - Presidency compromise text on DMA Proposal - ARTICLES (739 rows)
We generally support the modifications made to this Article as presented in the Presidency’s work document circulated on 9th July 2021.

The Commission may conduct a market investigation with the purpose of examining whether one or more services within the digital sector should be added to or removed from the list of core platform services or to detect types of practices that may limit the contestability of core platform services or to detect practices that may be unfair and which are not effectively addressed by this Regulation. It shall issue a public report at the latest within 12 months from the opening of the market investigation.

CZ thinks that taking into account the dynamic nature of the digital markets, it should be also clearly stated that services might be also...

Comments:

CZ thinks that taking into account the dynamic nature of the digital markets, it should be also clearly stated that services might be also...

Comments:

(continued)
102

Where appropriate, that report shall:

(a) be accompanied by a proposal to amend this Regulation in order to

**ES**

LT supports FI proposal to include „or remove obligations from them”.

**Comments:**

LT

elrem of the DMA.

The ordinary legislative procedure shall also be used to remove obligations in Articles 5 and 6, as this is also concerning an essential element of the DMA.

**Comments:**

LT

(Article 5 or 6: or to remove existing obligations in Articles 5 or 6; or to include new obligations in Articles 5 or 6; or to include new platform services laid down in point 2 of Article 7 or to include new platform services within the digital sector in the list of core platform services laid down in point 2 of Article 7 or to include new obligations in Article 7 or to remove existing obligations from them)

**Drafting:**

(a) be accompanied by a proposal to amend this Regulation in order to

**LT**

shows list redundancy.

Updated MS comments on ST 9971/21 - Presidency compromise text on DMA Proposal - ARTICLES (79 rows)
include additional services within the digital sector in the list of core platform services laid down in point 2 of Article 2 or to include additional obligations to Articles 5 and 6; adapt the list of core platform services laid down in point 2 of Article 2.

(a') be accompanied by a proposal to amend this Regulation in order to adapt the obligations in articles 5 and 6.

ES

The reference to the adaptation of the list of core platform services or the obligations allows the Commission to make a proposal to eliminate, incorporate or modify essential elements of those concepts.

LT: general comment regarding MSs involvement. LT supports moderate and voluntary MSs involvement in the enforcement of the DMA. LT supports moderate involvement. LT supports the Cion's position that information gathered throughout the process of the market investigation should not be disclosed to research institutions.

LT: Chapter V.

LT: general comment regarding MSs involvement. LT supports moderate and voluntary MSs involvement in the enforcement of the DMA. We welcome that a role of the MSs is increased in objectively justified cases, e.g. on-site inspections. LT supports the Cion’s position regarding the information gathered throughout the process of the market investigation should not be disclosed to research institutions.

Comments:

LT: be accompanied by a delegated act amending Articles 5 or 6 as provided for in Article 10.
The request for information shall be strictly for the purposes of:

1. The Commission may by simple request or by decision require information from undertakings and associations of undertakings to provide all necessary information. The Commission may also request access to data bases and algorithms of undertakings and request explanations on those by a simple request or by a decision.

The Competition may also request access to data bases and algorithms of undertakings and request explanations on those by a simple request or by a decision.

The Commission may by simple request or by decision require information from undertakings and associations of undertakings to provide all necessary information. The Commission may also request access to data bases and algorithms of undertakings and request explanations on those by a simple request or by a decision.

1. In order to carry out the duties assigned to it by this Regulation.

Investigative, enforcement and monitoring powers

The only enforcer of the DMA, as an alternative process could undermine the single market approach.
In order to carry out the duties assigned to it by this Regulation, the Commission may by simple request or by decision require the undertakings or associations of undertakings to provide all necessary information and access to databases and algorithms of undertakings and request explanations on those by a simple request or decision. The Commission may also request access to databases and algorithms of undertakings, undertakings and associations of undertakings for the purpose of monitoring, implementing and enforcing the rules laid down in this Regulation. If FI considers that the word „including” should be deleted to specify which information should be provided, the term „including” should be deleted. LT supports FI proposal to eliminate a word „including”. LT supports FI proposal to eliminate a word „including”. LT supports FI proposal to eliminate a word „including”. LT supports FI proposal to eliminate a word „including”. LT supports FI proposal to eliminate a word „including”. LT supports FI proposal to eliminate a word „including".
2. The Commission may request information from undertakings or associations of undertakings on behalf of the undertaking or the association of undertakings represented by law or by their constitution. Such supply may be made by the persons authorised to represent the undertaking or association of undertakings. Lawyers duly authorised to act may supply the information requested on behalf of the undertaking or the association of undertakings represented by law or by their constitution. Such supply may be made by the persons authorised to represent the undertaking or association of undertakings.

2.

The undertakings or associations of undertakings of their

3.

The undertakings or associations of undertakings on behalf of the undertaking or the association of undertakings represented by law or by their constitution. Such supply may be made by the persons authorised to represent the undertaking or association of undertakings. Lawyers duly authorised to act may supply the information requested on behalf of the undertaking or the association of undertakings.

2.

The Commission may request information from undertakings and associations of undertakings pursuant to Article 14 or proceedings pursuant to Article 18.

2.

The Commission may request information from undertakings and associations of undertakings.
The Commission shall without delay forward a copy of the simple request or of the decision requesting information to the competent authority of the Member State in whose territory the principal place of business or the main establishment of the undertaking or association of undertakings is situated.

(Drafting):
BE
be the only one ("to the competent authority of the Member State")

LT supports SK remark that it would be useful to have a clearer identification of a competent authority as this para indicates that it should be the only one ("to the competent authority of the Member State").

Comments:
LT
Principal place of business is not a used term in EU law.

Comments:
LT
Principal place of business is not a used term in EU law.

Comments:

"Principal place of business" is not a used term in EU law.

Comments:

LT supports SK remark that it would be useful to have a clearer identification of a competent authority as this para indicates that it should be the only one ("to the competent authority of the Member State").
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<td>2</td>
<td>Drafting:</td>
<td>The inspection is to be conducted as well as the competent authorities of the Member States in whose territory an undertaking of experts approved by the Commission pursuant to Article 3(2) and of undertakings of association of undertakings.</td>
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<td>On-site inspections may also be carried out with the assistance of auditors or experts appointed by the Commission to assist it in the performance of its tasks.</td>
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<td>6</td>
<td>LT supports the proposed changes.</td>
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Comments: LT supports the proposed changes.
During on-site inspections, the Commission, auditors or experts appointed by the Commission, as well as those officials or those authorised by the competent authorities of the Member State in whose territory the inspection is to be conducted, may require the undertaking or association to provide access to its organisation, functioning, IT system, algorithms, data-handling and business conduct, and to answer questions to key personnel or any representative or member of staff.

**BE**

*Drafting:*

During on-site inspections, the Commission, auditors or experts appointed by it as well as the competent authorities of the Member State in whose territory the inspection is to be conducted, may address questions to key personnel, and request the undertaking or association to provide access to its organisation, functioning, IT system, algorithms, data-handling, and business conduct. The Commission and auditors or experts appointed by it as well as the competent authorities of the Member State in whose territory the inspection is to be conducted, may require the undertaking or association to provide access to its key personnel or any representative or member of staff.

**SE**

*Comments:*

A clarification suggested from SE.

**BE**

*Comments:*

The Commission is in favour of the terminology used in Regulation 1/2003 and proposes thus this small modification.

**SE**

*Comments:*

End concluded.

---

*Updated MS comments on ST 9971/21 - Presidency compromise text on DMA Proposal - ARTICLES (739 rows)*
A clarification in line with Article 20 in Regulation 1/2003.

Comments:

SE

Address questions to key personnel or representatives of undertakings to provide access and explanations on its organisation, functioning, IT system, algorithms, data-handling and business conducts. The Commission and auditors or experts appointed by it as well as officials and those authorised or appointed by the competent authority of the Member State in whose territory the inspection is to be conducted may require the undertakings or association of undertakings to provide access and explanations on its organisation, functioning, IT system, algorithms, data-handling and business conducts. The Commission and auditors or experts appointed by it as well as officials and those authorised or appointed by the competent authority of the Member State in whose territory the inspection is to be conducted may require the undertakings or association of undertakings to provide access and explanations on its organisation, functioning, IT system, algorithms, data-handling and business conducts.

Comments:

BE

Proposes this small modification. BE is in favour of the terminology used in Regulation 1/2003 and

Comments:
4. Undertakings or associations of undertakings are required to submit to an on-site inspection ordered by decision of the Commission. The decision shall specify the subject matter and purpose of the visit, set the date on which it is to begin and indicate the penalties provided for in the case of a failure to comply with it. The decision shall also give the undertaking the right to have the decision reviewed by the Court of Justice of the European Union.

5. If the assistance provided for in paragraph 2 requires authorization, in so far as the Member States so decide, the national judicial authority shall control that the Commission decision is authentic and that the coercive measures envisaged are neither arbitrary nor excessive having regard to the subject matter and purpose of the inspection. In the event of such authorization being refused, the undertaking may have the decision reviewed by the Court of Justice of the European Union.

6. Where authorization is refused pursuant to this Article, the Member State shall afford the Commission the necessary assistance, requesting where appropriate the assistance of the police or of an equivalent enforcement authority, so as to enable them to conduct their inspection.

7. Where authorization as referred to in paragraph 6 is applied for, the national judicial authority shall control that the Commission decision is authentic and that the coercive measures envisaged are neither arbitrary nor excessive having regard to the subject matter of the inspection. In its control of the proportionality of the coercive measures, the national judicial authority may ask the Commission, directly or through the Member State of the national judicial authority, for a report on the inspection.
updated Ms comments on ST 9971/21 - Presidency compromise text on DMA Proposal - ARTICLES (139 rows)
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1. If during proceedings under Articles 16 or 25 the gatekeeper concerned offers commitments for the relevant core platform services to ensure compliance with the obligations laid down in Articles 5 and 6, the Commission may by decision adopted in accordance with the advisory procedure referred to in Article 32(4) make those commitments binding on that gatekeeper and declare that there are no further grounds for action.

2. The Commission may, upon request or on its own initiative, reopen by decision the relevant proceedings, where:

(a) the decision was based on incomplete, incorrect or misleading information provided by the parties;

(b) the gatekeeper concerned acts contrary to its commitments;

(c) the decision was based on any of the facts on which the decision was based;

(d) there has been a material change in any of the facts on which the decision was based.

3. Should the Commission consider that the commitments submitted by the gatekeeper concerned cannot ensure effective compliance with the obligations laid down in Articles 5 and 6, it shall explain the reasons for not making those commitments binding in the decision concluding the relevant proceedings.
**Article 24**

**Monitoring of obligations and measures**

1. The Commission may take the necessary actions to monitor the effective implementation and compliance with the obligations laid down in Articles 5 and 6 and the decisions taken pursuant to Articles 7, 16, 22 and 23.

2. The actions pursuant to paragraph 1 may include the appointment of independent external experts and auditors, including from competent authorities, to assist the Commission to monitor the obligations and measures and to provide specific expertise or knowledge to the Commission.

**Comments:**

Independent external experts cannot come, by definition, from competent authorities. Independent external experts cannot come, by definition, from competent authorities.

**(Drafting):**

Knowledge to the Commission.

**LU**

**Non-compliance**

1. The Commission shall adopt a non-compliance decision in accordance with the advisory procedure referred to in Article 32.

2. The actions pursuant to paragraph 1 may include the appointment of independent external experts and auditors, including from competent authorities, to assist the Commission to monitor the obligations and measures and to provide specific expertise or knowledge to the Commission.

3. In Articles 5 and 6 and the decisions taken pursuant to Articles 7, 16, 22, the Commission may take the necessary actions to monitor the effective implementation and compliance with the obligations laid down.
Where the Commission finds that the conditions of paragraph 1 are

3. decisión adoptada pursuant to paragraph 1.
   The measures it took to ensure compliance with the non-compliance of the measures specified in a decision adopted pursuant to Article 7(2); or measures ordered pursuant to Article 16(1); or interim measures ordered pursuant to Article 22; or commitments made legally binding pursuant to Article 23.

4. The gatekeeper shall provide the Commission with the description of the measures it considers to take or it considers that the gatekeeper should take in order to effectively address the preliminary findings. The gatekeeper shall explain in the preliminary findings how it plans to comply with the decision. In the preliminary findings, the Commission shall explain the measures it considers to take or it considers that the gatekeeper should take in order to effectively address the preliminary findings.

5. Where the Commission finds that the conditions of paragraph 1 are not met, the Commission shall order the gatekeeper to cease and desist with the non-compliance within an appropriate deadline and to provide explanations on how it plans to comply with the decision after the decision is adopted pursuant to paragraph 1.

6. The Commission may adopt the decision pursuant to paragraph 1. The gatekeeper shall provide the Commission with the description of the measures it took to ensure compliance with the non-compliance decision adopted pursuant to paragraph 1.
### Article 26: Fines

1. In the decision pursuant to Article 25, the Commission may impose on a gatekeeper fines not exceeding 10% of its total worldwide turnover where it finds that the gatekeeper, intentionally or negligently:
   - any of the obligations pursuant to Articles 5 and 6;
   - the measures specified by the Commission pursuant to a decision under Article 7(2);
   - measures ordered pursuant to Article 16(1);
   - a commitment made binding by a decision pursuant to Article 23.

2. The Commission may by decision impose on undertakings and associations of undertakings fines not exceeding 1% of the undertaking’s total turnover where they intentionally or negligently:
   - fail to comply with the measures specified by the Commission pursuant to a decision under Article 7(2);
   - fail to comply with any of the obligations pursuant to Articles 5 and 6;
   - fail to comply with the decision made binding by a decision pursuant to Article 23.

CZ: CZ welcomes the clarification that the turnover shall be defined as the world-wide turnover. We think that this approach takes more account of the power of individual gatekeepers.

**Comments:**

- **Drafting:**
  - Any necessary corrections or clarifications can be found in the text.

---

*Updated MS comments on ST 9971/21 - Presidency compromise text on DMA Proposal - ARTICLES (739 rows)*
The Commission may by decision impose on undertakings and associations of undertakings fines not exceeding 1% of their worldwide turnover in the preceding financial year where they

**(a)** fail to comply with the obligation to notify the Commission according to Article 3(3);

**ES**

(Comments): Adjustment corresponding to p. 1.

**(b)** fail to provide within the time-limit information that is required for assessing their designation as gatekeepers pursuant to Article 3(2) or supply incorrect, incomplete or misleading information that is required pursuant to Article 3(2) or Article 12;

**ES**

(Comments): Adjustment corresponding to p. 3(3). If

adherence to Article 3(3)

fail to comply with the obligation to notify the Commission according to Article 3(3) or

fail to supply or supply incorrect, incomplete or misleading information that is required pursuant to Article 3(3);

**ES**

(Comments): Adjustment corresponding to p. 1.

fail to submit the description or supply incorrect, incomplete or misleading information that is required pursuant to Article 13;

**ES**

(Comments):
<table>
<thead>
<tr>
<th>Article</th>
<th>Violation</th>
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<tbody>
<tr>
<td>2.1</td>
<td>Fail to submit to an on-site inspection pursuant to Article 21.</td>
</tr>
<tr>
<td>1.</td>
<td>Fail to comply with the subject-matter and purpose of an inspection pursuant to Article 19.</td>
</tr>
<tr>
<td>2.</td>
<td>Fail to rectify within a time-limit set by the Commission, incorrect, incomplete or misleading information given by a representative or a member of staff, or fail or refuse to provide complete information on facts.</td>
</tr>
<tr>
<td>3.</td>
<td>Fail to comply with the subject-matter and purpose of an inspection pursuant to Article 22.</td>
</tr>
<tr>
<td>4.</td>
<td>Fail to provide access to databases and algorithms pursuant to Article 19.</td>
</tr>
<tr>
<td>5.</td>
<td>Fail to provide access to databases and algorithms pursuant to Article 19.</td>
</tr>
</tbody>
</table>
19. The Commission may by decision impose periodic penalty payments not exceeding 5% of the average daily worldwide turnover in the preceding financial year per day, calculated from the date set by that decision, in order to compel them:

(a) to comply with the decision pursuant to Article 16(1); or

(b) to supply correct and complete information within the time limit required by a request for information made by decision pursuant to Article 16(2).

However, the Commission shall not require payment pursuant to the second or the third subparagraph from undertakings which show that they have not implemented the infringing decision of the association of undertakings and either were not aware of its existence or have actively distanced themselves from it before the Commission opened proceedings under Article 18.

The financial liability of each undertaking in respect of the payment of the fine shall not exceed 10% of its total worldwide turnover in the preceding financial year.

Article 27

Periodic penalty payments

1. The Commission may by decision impose on undertakings, including gatekeepers where applicable, and association of undertakings, periodic penalty payments not exceeding 5% of the average daily worldwide turnover in the preceding financial year, in order to compel them:

(a) to comply with the decision pursuant to Article 16(1); or

(b) to supply correct and complete information within the time limit required by a request for information made by decision pursuant to Article 19.

However, the Commission shall not require payment pursuant to the second or the third subparagraph from undertakings which show that they have not implemented the infringing decision of the association of undertakings and either were not aware of its existence or have actively distanced themselves from it before the Commission opened proceedings under Article 18.

The financial liability of each undertaking in respect of the payment of the fine shall not exceed 10% of its total worldwide turnover in the preceding financial year.
2. Where the undertakings have satisfied the obligation which the periodic penalty was intended to enforce, the Commission may by decision adopted in accordance with the advisory procedure referred to in Article 32(4) set the definitive amount of the periodic penalty at a figure lower than that which would arise under the original decision.

Decisions and provisions of the Commission adopted pursuant to Article 32(4) shall be preliminary decisions. They shall be based on the preliminary findings of the Commission and shall be subject to the right of the undertakings to be heard in the proceedings before the Commission and to appeal against a decision to the Court of First Instance.

(Comments): It is not clear whether this provision is intended to correct practical errors/misfits in the calculation of the periodic penalty or to introduce incentives for the gatekeeper. If the aim is the latter, the existence of periodic penalties in the calculation of the periodic penalty of an undertaking increases the risk of non-compliance. If the aim is the former, the provision may result in an over-compensation of the undertakings. The provisions may also affect the effectiveness of the sanctions.

(ES) (Drafting): Deletion

(ES) (Comments): It is not clear whether this provision is intended to correct practical errors/misfits in the calculation of the periodic penalty or to introduce incentives for the gatekeeper. If the aim is the latter, the existence of periodic penalties should be enough to incentive the cessation of the practice.

To ensure access to data bases and algorithms of undertakings and to supply explanations on those as required by a decision pursuant to Article 19:

(a) To comply with a decision pursuant to Article 25(1).
**Article 28**

Limitation periods for the imposition of penalties

1. The powers conferred on the Commission by Articles 26 and 27 shall be subject to a three year limitation period.

2. Time shall begin to run on the day on which the infringement is committed. However, in the case of continuing or repeated infringements, time shall begin to run on the day on which the infringement ceases.

3. Any action taken by the Commission for the purpose of a market investigation or proceedings in respect of an infringement shall interrupt the limitation period for the imposition of fines or periodic penalty payments. The limitation period shall be interrupted with effect from the date on which the action is notified to at least one undertaking or association of undertakings which has participated in the infringement.

Actions which interrupt the running of the period shall include in particular the following:

- Requests for information by the Commission;
- On-site inspections;
- Written authorisations to conduct inspections issued to its officials by the Commission.

**LU**

Issued to its officials by the Commission:

(a) On-site inspections.

(b) Written authorisations to conduct inspections issued to its officials by the Commission.
<table>
<thead>
<tr>
<th>Article</th>
<th>Title</th>
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<tbody>
<tr>
<td>21</td>
<td>Article 21 refers to written authorisations, and we would be reluctant to make such on-site inspections unnecessarily formalistic.</td>
</tr>
</tbody>
</table>

**Comments:**

1. The power of the Commission to enforce decisions taken pursuant to Articles 26 and 27 shall be subject to a limitation period of five years.
2. Time shall begin to run on the day on which the decision becomes final, and shall expire at the latest on the day on which a period equal to twice the limitation period has elapsed without the Commission having imposed a fine or a periodic penalty payment.
3. The limitation period for the enforcement of penalties shall be suspended for as long as the decision of the Commission is the subject of proceedings pending before the Court of Justice of the European Union.
4. Each interruption shall start time running afresh, however, the period shall not be extended by the time during which enforcement is suspended pursuant to paragraph 5.

**Paragraph 5:**

The Commission is the subject of proceedings pending before the Court of Justice of the European Union.
Updated MS
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interrupted:
(a) by notification of a decision varying the original amount of the fine or periodic penalty payment or refusing an application for variation;
(b) by any action of the Commission or of a Member State, acting at the request of the Commission, designed to enforce payment of the fine or periodic penalty payment.

4. Each interruption shall start time running afresh.

5. The limitation period for the enforcement of penalties shall be suspended for so long as:
(a) time to pay is allowed;
(b) enforcement of payment is suspended pursuant to a decision of the Court of Justice of the European Union or to a decision by a national court.

(SE comments): SE has a question why “national court” has been added.

(ES comments): Court of Justice of the European Union or to a decision by a national court.

(Drafting): enforcement of payment is suspended pursuant to a decision of the

Court of Justice of the European Union or to a decision by a national court.

Inheritance:

Inserted MS comments on ST 9971/21 - Presidency compromise text on DMA Proposal - ARTICLES (739 rows)
As said in comments about private enforcement (art. 39) if this sentence is to be added, it should preserve the conflict between resolutions of different national courts. This may also hear other natural or legal persons.

\[\text{(Comments)}\]
It is essential that third parties, including consumer representatives, with a sufficient interest in the decision set out in Article 30(1) be heard before the Commission takes such decisions. Only hearing the gatekeepers in these cases cannot lead to the best outcomes for contestability and fairness of markets.

Gatekeepers, undertakings, and associations of undertakings concerned and interested third persons have been able to comment on the Commission's preliminary findings and which may not be less than 14 days.

3. The Commission shall base its decisions only on objections on which gatekeepers, undertakings, and associations of undertakings concerned and interested third persons have been able to comment.

The Commission shall base its decisions only on objections on which gatekeepers, undertakings, and associations of undertakings concerned and interested third persons have been able to comment.

It is essential that third parties, including consumer representatives, with a sufficient interest in the decision set out in Article 30(1) be heard before the Commission takes such decisions. Only hearing the gatekeepers in these cases cannot lead to the best outcomes for contestability and fairness of markets.
4. The rights of defence of the gatekeeper or undertaking or association of undertakings concerned shall be fully respected in any proceedings. The gatekeeper or undertaking or association of undertakings shall be entitled to have access to the Commission's file under the terms of a negotiated disclosure, subject to the legitimate interest of undertakings in the protection of their business secrets. The right of access shall not extend to confidential information and internal documents of the Commission or the competent authorities of the Member States. In particular, the right of access shall not extend to correspondence between the Commission and the competent authorities of the Member States. Nothing in this paragraph shall prevent the Commission from disclosing and using information necessary to prove an infringement.
The information collected pursuant to Article 12 shall be used only for the purposes of this Regulation and Regulation (EC) No. 139/2004. BE (Comments):

This article 1 (6) refers to the Merger Regulation as well. In the information collected pursuant to Article 12, shall be used only for the purposes of this Regulation and Regulation (EC) No. 139/2004. BE (Drafting):

BE:

1a. The information collected pursuant to Article 12 shall be used only for the purposes of this Regulation, and 2. shall be used only for the purposes of this Regulation.

1a. The information collected pursuant to Article 12 shall be used only for the purposes of this Regulation, and 2. shall be used only for the purposes of this Regulation.

1. Professional secrecy

Article 3

1/2003 (Article 7) in antitrust enforcement

1/2003 (Article 7) in antitrust enforcement

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1. Without prejudice to the exchange and to the use of information provided for the purpose of use pursuant to Articles 32 and 37a, the Commission, the authorities of the Member States, their officials, servants and other persons working under the supervision of these authorities and any natural or legal person, including auditors and experts appointed pursuant to Article 24(2), shall not disclose information acquired or exchanged by them pursuant to this Regulation and of the kind covered by the obligation of professional secrecy. This obligation shall also apply to all representatives and experts of Member States working under the supervision of the authorities of the Member States, their officials, servants and other persons working under their supervision.

2. Where the opinion of the committee is to be obtained by written procedure, that procedure shall be commenced without result when within the time-limit for delivery of the opinion the chair of the committee so decides or a simple majority of committee members so request.

3. The Commission shall communicate the opinion of the Digital Markets Advisory Committee to the addressee of an individual decision, and the relevant authorities of the Member States, including in any other languages and of any natural or legal person, including auditors and experts appointed pursuant to Article 24(2), shall not disclose information acquired or exchanged by them pursuant to this Regulation and of the kind covered by the obligation of professional secrecy. The obligation of professional secrecy, this obligation shall no also apply to all representatives and experts of Member States working under the supervision of the authorities of the Member States, their officials, servants and other persons working under the supervision of those authorities and any natural or legal person, including auditors and experts appointed pursuant to Article 24(2), shall not disclose information acquired or exchanged by them pursuant to this Regulation and of the kind covered by the obligation of professional secrecy.
Having this in mind, in our opinion Art. 32a.1 and especially the wording:

1. Article 32a.1, "the single market approach:

the only enforcer of the DMA, as an alternative process could undermine the effectiveness and cooperation mechanism, which would undermine an effective and coherent enforcement mechanism, which would undermine an effective, speedy and coherent enforcement of the DMA.

We would also caution against an overly complex and formalised enforcement with national authorities is crucial, see proposal for includes and co-operation of the DMA. Exchange of information by the authorities as co-enforcers of the DMA. Exchange of information by the authorities as co-enforcers of the DMA.

Furthermore, we would not support co-operating national competition authorities that this is useful and support by national competition authorities with the European Commission claims the role of the DMA, with @-site inspections. However, we would generally support the Article. We also strongly support that the LT.

General comment regarding MSs involvement. LT supports moderate involvement.

Comments:

LT:

Effective, speedy and coherent enforcement of the DMA. Effective, speedy and coherent enforcement of the DMA.

We would also caution against an overly complex and formalised enforcement with national authorities is crucial, see proposal for includes and co-operation of the DMA. Exchange of information by the authorities as co-enforcers of the DMA. Exchange of information by the authorities as co-enforcers of the DMA.

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Comments:

LT:

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Furthermore, we would not support co-operating national competition authorities that this is useful and support by national competition authorities with the European Commission claims the role of the DMA, with @-site inspections. However, we would generally support the Article. We also strongly support that the LT.
Commission's proposal. It is important that the resources of national authorities should assist the Commission in the enforcement of the rules in the area of supervision authority for DMA. SE supports that national authorities have a cross-border nature, the Commission is best placed to complement their enforcement, and coordinate their enforcement actions. 

IE (Drafting): Article 32a Cooperation and coordination

BE (Drafting): Article 32 Cooperation and coordination

CZ (Comments): CZ welcomes the amendments, which specify the cooperation between the Commission and the Member States. Article 32a was a needed part of the text. We could also support a mention of ensuring necessary resources by the Member States for this cooperation and coordination, similarly to what we have in the ECN+ directive. Article 32a was a needed part of the text, and CZ welcomes the amendments, which specify the cooperation between the Commission and the Member States.

SE (Comments): The Swedish position, approved by the Swedish Parliament, is that since the services have a cross-border nature, the Commission is best placed to assist the national authorities in their enforcement duties.

CZ (Comments): CZ welcomes the amendments, which specify the cooperation between the Commission and the Member States. Article 32a was a needed part of the text. We could also support a mention of ensuring necessary resources by the Member States for this cooperation and coordination, similarly to what we have in the ECN+ directive. Article 32a was a needed part of the text, and CZ welcomes the amendments, which specify the cooperation between the Commission and the Member States.
authorities are not used more than is necessary. According to SE, a new proposal with extended tasks for national authorities should be accompanied with an assessment of the implementation of the Commission’s proposal in terms of what is appropriate and necessary for the legislative process. The impact assessments of significant amendments should be performed by the European Parliament and the Council. According to SE, a new proposal with extended tasks for national authorities should be accompanied with an assessment of the Commission’s proposal in terms of what is appropriate and necessary for the legislative process.
The Commission and Member States

(Drafting):

The Commission and Member States shall work in close cooperation and coordinate their enforcement actions to ensure coherent, effective and complementary enforcement of available legal instruments applied to gatekeepers within the meaning of this Regulation.

Member States shall ensure human, financial, technical and technological resources necessary to perform such enforcement actions.

Comments:

LT: Justification:
It would be helpful if the DMA had a legal ground which could be used by NCAs and other national enforcing authorities to secure necessary resources to implement the new functions, e.g.:

- Art. 21(2) participating in on-site inspections;
- Art. 24(2) assisting COM to monitor the DMA obligations and measures, provide specific expertise or knowledge;
- Art. 2(2) participating in on-site inspections;
- Art. 21(2)(k) closely cooperate with COM while supporting market investigations;
- Art. 37a(1) assisting CON through the Digital Markets Advisory Committee;
- Art. 32a(1)&(4) closely cooperate with COM while supporting market investigations.

Suggested provision would be similar to already existing in ECN.

LT: Justification:

Updated MS comments on ST 9971/21 - Presidency compromise text on DMA Proposal - ARTICLES (739 rows)
Article 739 (739 rows)

1. This Regulation shall work in close cooperation and coordinate their enforcement actions to ensure coherent, effective and complementary enforcement of available legal instruments applied to gatekeepers within the meaning of this Regulation.

2. National authorities shall not take decisions which run counter to a decision adopted by the Commission under this Regulation.

3. The Commission and the competent authorities of the Member States enforcing the rules referred to in Article 1(6) shall have the power to provide one another with any matter of fact or of law, including confidential information, for the purpose of a coherent enforcement of this Regulation.

*Comments:* In order to have normative value, this provision needs to mandate information exchange rather than just empower Member States to do so.

*Drafting:* Confidential information to provide one another with any matter of fact or of law, including

*Comments:* This is also more consistent with paragraph 4.

*Drafting:* Confidential information to provide one another with any matter of fact or of law, including

*Comments:* Information exchange rather than just empower Member States to do so.

*Drafting:* To ensure coherent, effective and complementary enforcement of applicable legal instruments applied to gatekeepers within the meaning of this Regulation, national authorities shall maintain coordination and cooperation and, where necessary, enforcement actions.
3. The Commission and the competent authorities of the Member States enforcing the rules referred to in Article 1(6) shall have the power to provide one another with any matter of fact or of law, including confidential information.

SE

4. Information exchanged pursuant to paragraph 3 shall only be exchanged and used for the purpose of coordination of the enforcement of this Regulation and the rules referred to in Article 1(6).

IE

4. Information exchanged pursuant to paragraph 3 shall only be exchanged and used for the purpose of coordination of the enforcement of this Regulation and the rules referred to in Article 1(6).

Comments:

SE

[Comment: It should be clarified how this provision relates to Article 28 of Regulation 1/2003 on professional secrecy.]

Drafting:

IE

[Drafting: The Commission and the competent authorities enforcing the rules referred to in Article 1(6) shall have the power to provide one another with any matter of fact or law, including confidential information.]

Comments:

SE

[Comment: Information exchanged pursuant to paragraph 3 shall only be exchanged and used for the purpose of coordination of the enforcement of this Regulation and the rules referred to in Article 1(6).]
Updated MS comments on ST 9971/21 - Presidency compromise text on DMA Proposal

1. The Commission may ask competent authorities of the Member States to support any of its market investigations pursuant to this Regulation.

<table>
<thead>
<tr>
<th>Comments:</th>
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<tbody>
<tr>
<td>It should be clarified in the Regulation how this provision relates to the regulatory framework on which supervision by the various authorities is based. For example, these may be provisions that information may only be used for the purpose of applying the relevant regulatory framework, as in Article 12(2) of Regulation 1/2003. It should be clarified in the Regulation how this provision relates to the regulatory framework on which supervision by the various authorities is based. For example, these may be provisions that information may only be used for the purpose of applying the relevant regulatory framework, as in Article 12(2) of Regulation 1/2003.</td>
</tr>
</tbody>
</table>

2. Article 32a (c) on the basis of the rules and principles established in Article 1(7) (…) on the basis of the rules and principles established in Article 32.a. The Commission may ask competent authorities of the Member States to support any of its market investigations pursuant to this Regulation.

<table>
<thead>
<tr>
<th>Comments:</th>
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<tbody>
<tr>
<td>Problem of scope of cooperation: reference only to 1(6)</td>
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<th>Comments:</th>
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<tr>
<td>LT: more information is needed to understand the scope of the possible obligation on the MS's side.</td>
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</tbody>
</table>
According to SE the provision is very broad and unprecise. If there should be a majority for including the provision in the proposal, it should be clarified and delimited in the article what is meant by “support any of its market investigations”. According to SE, support should be limited to cases where the Commission consider it necessary to be given support about knowledge and experience of national markets. The proposal should also be more precise with regard to which parts of the market investigations the competent authorities of the Member States may give such support to the extent that is possible regarding its state of resources.

The Commission may ask competent authorities of the Member States enforcing the rules referred to in Article 1(6) may consult the Commission on any matter relating to the application of this Regulation.

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The competent authorities of the Member States enforcing the rules referred to in Article 1(6) may consult the Commission on any matter relating to the application of this Regulation.

The Commission may, therefore, ask competent national competition authorities to support any of its market investigations pursuant to this Regulation. However, competent national competition authorities shall not take decisions which run counter to a decision adopted by the Commission.

In accordance with the principles laid down in Article 1, the Commission shall be the sole decision maker on the correct application of this Regulation. To ensure effective enforcement and coherent implementation, the Commission shall be supported in every possible way by the expertise of the competent national competition authorities. To ensure effective enforcement and coherent implementation of this Regulation, the Commission shall, therefore, ask competent national competition authorities to support any of its market investigations pursuant to this Regulation. However, competent national competition authorities shall not take decisions which run counter to a decision adopted by the Commission.

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In accordance with the principles laid down in Article 1, the Commission shall be the sole decision maker on the correct application of this Regulation. To ensure effective enforcement and coherent implementation, the Commission shall be supported in every possible way by the expertise of the competent national competition authorities. To ensure effective enforcement and coherent implementation of this Regulation, the Commission shall, therefore, ask competent national competition authorities to support any of its market investigations pursuant to this Regulation. However, competent national competition authorities shall not take decisions which run counter to a decision adopted by the Commission.
Within this framework, the competent national competition authorities shall perform – inter alia – the following tasks:

(a) synchronize national implementation, ensure that decisions based on this Regulation are coherent with related regulations and support the Commission in technical enforcement matters;

(b) gather market intelligence on the ground and coordinate data collection and monitoring throughout the internal market including on enforcement, emerging gatekeepers, and technological trends;

(c) submit complaints from business users, competitors and end-users as provided for in Article 21a to the Commission and raise awareness of enforcement, emerging gatekeepers and technological trends;

(d) at the request of the Commission, cooperate in the application of Article 12, 15, 16 and 17 and otherwise assist the Commission in investigations.

In this regard, the competent national competition authorities shall be entitled to exercise, mutatis mutandis, the following powers of the Commission:

(i) requests for information as set out in Article 19;

(ii) power to carry out interviews and take statements as set out in Article 19;

(iii) powers to conduct on-site inspections as set out in Article 21:

- ARTICLE S (739 rows)
Proposed amendment better highlights where national competition authorities will support the Commission.

Proposal: Article 1(6)

(Commodons):  

IE

- The competent national competition authorities shall have the power to provide each other with any matter of fact or of law in their power to enforce the rules referred to in Article 1(6) shall have the power to exchange the information supplied to the Commission.

7. The competent national competition authorities shall, when acting pursuant to paragraph 3, inform the Commission in writing of the first formal investigative measure.

This information may also be made available to the competent national competition authorities of the other Member States.

IE

- The Commission and the competent national competition authorities shall have the power to exchange information between themselves.

6. The Commission and the competent national competition authorities shall, when applying Articles 1(6) and 102 TFEU as defined in their powers when applying Articles 1(6) and 102 TFEU as defined in the preparation of delegated acts according to Article 10;

(a) monitor the international context, general knowledge on the obligations under Articles 5 and 6 and advice the Commission on the update of

(b) make recommendations to the Commission on the update of

(c) make recommendations to the Commission on the update of

(d) make recommendations to the Commission on the update of

(e) make recommendations to the Commission on the update of

(f) monitor the international context, general knowledge on the obligations under Articles 5 and 6 and advice the Commission on the update of

(g) make recommendations to the Commission on the update of

(h) make recommendations to the Commission on the update of

(i) make recommendations to the Commission on the update of

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(8) make recommendations to the Commission on the update of

(9) make recommendations to the Commission on the update of
When one or more Member States request the Commission to:

1.

Commission shall be published.

[Text continues with further discussion and comments from various parties, discussing the threshold for requesting a market investigation and supporting or opposing the proposal based on the conditions laid out in Art. 15.]
1a. When three or more Member States request the Commission to open an investigation pursuant to Article 16 because they consider that there are reasonable grounds to suspect that a gatekeeper has systematically infringed the obligations laid down in Articles 5 and 6 and has further strengthened or extended its gatekeeper position in relation to the characteristics under Article 3(1), the Commission shall within four months examine whether there are reasonable grounds to open such an investigation and the result of such examination shall be published.

1b. When three or more Member States request the Commission to open an investigation pursuant to Article 17 because they consider that one or more services within the digital sector should be added to the list of core platform services pursuant to Article 2(2) or that there are reasonable grounds to suspect that one or several types of practices are not effectively addressed by this Regulation and may limit the contestability of core platform services or may be unfair, the Commission shall within four months examine whether there are reasonable grounds to open such an investigation and the result of such examination shall be published.
This provision allows three or more Member States to start a procedure which may result in a change of scope of the DMA. As for any piece of legislation, the Commission’s evaluation report, including evidence and demonstrable findings, is the appropriate basis for any such change. The burden for the request should be lower. It must be pointed out that the loyal cooperation of MS is ensured by the loyal cooperation of the investigation itself to gather the factual evidence that is going to be assessed. The correct use of this mechanism is ensured by the loyal cooperation of MS. The increased burden of proof is reasonable grounds to support the diligent and effective use of this mechanism. The correct use of this mechanism is ensured by the loyal cooperation of MS.

2. Member States shall submit evidence in support of their request pursuant to Article 33(1).
While an article on private enforcement makes sense in classic competition law instruments, it is a lot less common for legislations based on Articles 114 TFEU and the harmonised application of the rules should be avoided.

Any incentive that undermines a uniform application of the DMA via national courts. Any incentives that undermine the enforcement by the Commission and possibly stall the implementation of the DMA's rules, which will potentially conflict with the CJEU. The ultimate result will be requests for preliminary rulings to the CJEU. The ultimate result will be requests for preliminary rulings to the CJEU.

We are not convinced by this Article. We are not convinced by this Article. This Article actively encourages diverging applications of the DMA in national courts. It is true that national courts may apply the DMA in any Member State. However, national courts may apply the DMA in any Member State. However, including this Article sends the message that the DMA will not be sufficiently clear and open to interpretation by national courts. It also questions indirectly the effectiveness of the enforcement by the Commission as sole enforcer.

While an Article on private enforcement makes sense in classic competition law instruments, it is a lot less common for legislations based on Article 114 TFEU.

LT: Although LT understands the reasoning behind the new Article, LT is not convinced by this Article. LT is not convinced by this Article.

LT (Comments):

LT on Article 114 TFEU:

Comments:

We are not convinced by this Article. This Article actively encourages diverging applications of the DMA in national courts. It is true that national courts may apply the DMA in any Member State. However, including this Article sends the message that the DMA will not be sufficiently clear and open to interpretation by national courts. It also questions indirectly the effectiveness of the enforcement by the Commission as sole enforcer.

While an Article on private enforcement makes sense in classic competition law instruments, it is a lot less common for legislations based on Article 114 TFEU.
Therefore, we are waiting for further discussion, which, we hope, will bring more clarity on the practical implementation aspects and implication on the harmonisation objective of the DMA. Overall, it is unclear what the intended purpose of this new Article is.

This provision means that individuals or corporations will be able to ask national courts to enforce the rights provided for in Articles 5 and 6 by way of injunctions or seek monetary damages for a breach of those rights. Therefore, we are waiting for further discussion, which, we hope, will bring more clarity on the practical implementation aspects and implication on the harmonisation objective of the DMA.
CZ thinks that this wording of the new Article might lead to the risk of fragmentation of interpretation with regard to issue of a parallel application of the DMA by the Commission and national courts or at least independent court interpretation of the obligations. If this is the object of the introduction of this Article, CZ can’t agree with it. Otherwise this Article should be aimed at claiming compensation of damages for infringement (which should be, according to us, the essence of the idea of private enforcement), the article 33a would need to be re-drafted into something similar to what we have in Directive 2014/104/EU and focus on the rights of those who suffered harm to seek compensation.

FI considers that adding Article 33a on private enforcement would result in an inherent risk of fragmented interpretations if national courts could independently interpret the obligations. Such fragmentation would seriously jeopardize the objective of creating a uniform EU-wide legal framework for gatekeepers.

FI would also welcome additional clarification and practical examples from the Commission on what is actually meant by private enforcement in this context. Would the article allow any undertaking to file a complaint in a national court requesting, for example, an injunction decision if they are affected by a gatekeeper’s non-compliance with the obligations? Or would this Article be limited to giving national courts the power to verify with a decision a breach of Articles 5 and 6, and rely on the Commission to be affected by a gatekeeper’s non-compliance with the obligations? CZ thinks that adding Article 33a on private enforcement might be deleted from the DMA, as the national courts might apply any Regulation of the European Parliament and of the Council (typically in cases of claiming damages) directly, without the need of expressly mentioning it.
SE would like a scrutiny reservation for article 33a

Regulation could be charted again at the next meeting

SE would appreciate if the detailed reasons for the direct effect of the

the title of the article and in p.1.

national courts. If this is the case, it should, according to SE, be charted in

the cooperation and coordination between the Commission and the

enforcement. Cooperation and coordination between the Commission and national

enforcement (Scheme)

SE
Updated MS comments on ST 9971/21 - Presidency compromise draft on DMA Proposal - ARTICLES (739 rows)

This Regulation

1. National courts shall have the power to apply Articles 5 and 6 of this Regulation.

(Drafting:)

IE

1. National courts shall have the power to apply Articles 5 and 6 of this Regulation.

(Drafting:)

LU

1. National courts shall have the power to apply Articles 5 and 6 of this Regulation.

(Drafting:)

IE

1. National courts shall have the power to apply Articles 5 and 6 of this Regulation.

(Drafting:)

LU

1. National courts shall have the power to apply Articles 5 and 6 of this Regulation.

(Drafting:)

IE

CL’s clarification would be needed before providing drafting suggestions.

The inconsistency problems is not clear if the Commission’s participation in amicus curiae can solve different national courts and guarantee the consistency of the enforcement. Moreover, the effects on market fragmentation are not clear. If this article is to be added, it should prevent the conflict between resolutions of resolutions of the application of this Regulation is not clear. Neither is its implications.

(Comments:)

ES

Private enforcement Article

(Drafting:)

ES

Updated MS comments on ST 9971/21 - Presidency compromise draft on DMA Proposal - ARTICLES (739 rows)
1. According to EU law, national courts shall have the power to apply Articles 5 and 6 of this Regulation.

2. In proceedings for the application of this Regulation, national courts may ask the Commission to transmit to them information in its possession or its opinion on questions concerning the application of this Regulation.

Comments:
The purpose of the amendment is to clarify that the Regulation does not confer any new powers to national courts.

(Drafting):

ES

(Drafting):

LU
1.49 courts may ask the Commission to transmit to them information in its possession or its opinion on questions concerning the application of this Regulation.

3. Member States shall forward to the Commission a copy of any written judgment of national courts deciding on the application of this Regulation. Such copy shall be forwarded without delay after the full written judgment has been notified to the parties.

4. Where the coherent application of this Regulation so requires, the Commission, acting on its own initiative, may submit written observations to national courts. With the permission of the court in question, it may also make oral observations.
4. Where the coherent application of this Regulation so requires, the Commission, acting on its own initiative, may submit written observations to national courts. With the permission of the court in question, it may also make oral observations.

5. For the purpose of the preparation of their observations only, the Commission may request the relevant national court to transmit or ensure the transmission to the Commission of any documents necessary for the assessment of the case.

6. National courts shall not give a decision which runs counter to a decision adopted by the Commission under this Regulation. They must also avoid giving decisions which would conflict with a decision contemplated by the Commission in proceedings it has initiated under this Regulation. To that effect, the national court may assess whether it is necessary to stay its proceedings.

5. National courts shall not give a decision which runs counter to a decision adopted by the Commission under this Regulation. They must also avoid giving decisions which would conflict with a decision contemplated by the Commission in proceedings it has initiated under this Regulation. To that effect, the national court may assess whether it is necessary to stay its proceedings.

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**Chapter VI**

**General provisions**

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<td><strong>Updated MS comments on ST 9971/21</strong></td>
<td><strong>Presidency compromise text on DMA Proposal</strong></td>
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6. National courts shall not give a decision which runs counter to a decision adopted by the Commission under this Regulation. They must also avoid giving decisions which would conflict with a decision adopted by the Commission in proceedings it has initiated.

**Drafting:**

(Comments):

**SE**

This goes against the independence of the judiciary.

(Comments):

**LU**

It is necessary to stay the proceedings of this Regulation. To that effect, the national court may assess whether it is necessary to stay its proceedings.

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<td><strong>ARTICLES (799 rows)</strong></td>
<td><strong>Updated MS comments on ST 9971/21 - Presidency compromise text on DMA Proposal</strong></td>
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</table>
1. The Commission shall publish the decisions which it takes pursuant to Articles 3, 7, 8, 9, 15, 16, 17, 18, 22, 23(1), 25, 26 and 27.

(Drafting):

ES

Publication of decisions

(Comments):

IE

A short report should accompany the Commission's decisions for transparency purposes.

IE

A short report should accompany the Commission's decisions for transparency purposes.

ES

1. The Commission shall publish the decisions which it takes pursuant to Articles 3, 7, 8, 9, 15, 16, 18, 22, 23(1), 25, 26 and 27.

(Drafting):

ES

Publication of decisions

(Comments):

IE

For transparency purposes a short report should accompany Commission decisions.

IE

For transparency purposes a short report should accompany Commission decisions.

ES

Updated MS comments on ST 9971/21 - Presidency compromise text on DMA Proposal - ARTICLES (739 rows)
Such publication shall state the names of the parties and the main content of the decision, including any penalties imposed.

2. The Commission shall publish on a dedicated public website the documents, reports or summaries pursuant to Articles 4(1), 7(4), 9a(2), 12(4), 13, 17 and 33.

3. The Commission shall establish a reporting mechanism through which interested third parties could provide relevant information and report to the Commission every practice that falls into the scope of other obligations and active publication of information by the Commission will trigger a vast amount of documents and publications related to the different procedures that can be developed within the framework of the Digital Markets Act proposal containing various transparency obligations. In order to facilitate the access of citizens, businesses or other interested entities to these documents and with the aim at the improvement of relations with the European institutions, it would be necessary to avoid the dispersion of information and the complexity of accessing it.

Comments:
The Digital Markets Act proposal contains various transparency obligations along the text. It is likely that this wide range of transparency obligations and active publication of information by the Commission will trigger a vast amount of documents and publications related to the different procedures that can be developed within the framework of the Digital Markets Act proposal containing various transparency obligations. In order to facilitate the access of citizens, businesses or other interested entities to these documents and with the aim at the improvement of relations with the European institutions, it would be necessary to avoid the dispersion of information and the complexity of accessing it.

Drafting:
This Regulation and could be deemed to be a non-compliance of it.

The Commission shall establish a reporting mechanism through:
9a(2), 12(4), 13, 17 and 33.

The Commission shall publish on a dedicated public website:

- the documents, reports or summaries pursuant to Articles 4(1), 7(4), 9a(2), 12(4), 13, 17 and 33.
- The Commission shall establish a reporting mechanism through:

This Regulation and could be deemed to be a non-compliance of it.
In this context, the creation of a single and centralized information channel within the framework of the DMA, far from imposing new administrative burdens on the stakeholders, will mean a reduction in information search times, will enhance the quantity and quality of information published by the European Commission, will foster interoperability and reuse of it and will avoid duplication and dispersion of publications. This will reduce the administrative burdens on the stakeholders, will mean a reduction in search times, will enhance the quantity and quality of information published by the Commission, will foster interoperability and reuse of it and will avoid duplication and dispersion of publications.

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<td>24</td>
<td>The publication shall have regard to the legitimate interests of gatekeepers or third parties in the protection of their confidential information.</td>
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<tr>
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In accordance with Article 261 of the Treaty on the Functioning of the European Union, the Court of Justice of the European Union has unlimited jurisdiction to review decisions by which the Commission has imposed fines or periodic penalty payments. It may cancel, reduce or increase the fine or periodic penalty payment imposed.

**Article 35**

Review by the Court of Justice of the European Union

In accordance with Article 261 of the Treaty on the Functioning of the European Union, the Court of Justice of the European Union has unlimited jurisdiction to review decisions by which the Commission has imposed fines or periodic penalty payments. It may cancel, reduce or increase the fine or periodic penalty payment imposed.

**Article 36**

Implementing provisions

The Commission may adopt implementing acts concerning:

- 12, 13, 15, 17, 20, 22, 23, 25 and 30
| (a) | the form, content and other details of notifications and submissions pursuant to Article 3; |
| (b) | the form, content and other details of the technical measures that gatekeepers shall implement in order to ensure compliance with points (h), (i) and (j) of Article 6(1); |
| (ba) | the form, content and other details of the reasoned request pursuant to Article 7(7); |
| (bb) | the form, content and other details of the reasoned requests pursuant to Articles 8 and 9; |
| (bc) | the form, content and other details of the regulatory reports delivered pursuant to Article 9a; |
| (c) | the form, content and other details of notifications and submissions made pursuant to Articles 12 and 13; |
| (d) | the practical arrangements of extension of deadlines as provided in Article 16; |
| (e) | the practical arrangements of the proceedings concerning investigations pursuant to Articles 15, 16, 17, and proceedings pursuant to Articles 22, 23 and 25; |
| (f) | the practical arrangements for exercising rights to be heard provided for in Article 30; |

Provided for in Article 30:

- the practical arrangements for exercising rights to be heard
1. The power to adopt delegated acts is conferred on the Commission.

Exercise of the delegation

Article 37

Within the time limit laid down, which may not be less than one month, during the implementation of any measures pursuant to paragraph 1, the Commission shall publish a draft implementing act and invite all interested parties to submit their comments. Before the adoption of any measures pursuant to paragraph 1, the Commission shall publish a draft implementing act and invite all interested parties to submit their comments. Before the adoption of the final text of the implementing act, the Commission shall consult the Member States and the European Parliament.

2. The practical arrangements for the cooperation and coordination between the Commission and the Member States provided for in Article 1(7).

The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

Exercise of the delegation

Article 37

Within the time limit laid down, which may not be less than one month, during the implementation of any measures pursuant to paragraph 1, the Commission shall publish a draft implementing act and invite all interested parties to submit their comments. Before the adoption of the final text of the implementing act, the Commission shall consult the Member States and the European Parliament.

In that case SE may consider that some elements should be included in the regulation, provided they can be included in the regulation in accordance with the provisions on national authorities that will be included in the regulation. SE has no comments on the amendments, with the exception of the annex.

Comments:

SE has no comments on the amendments, with the exception of the annex.

Information provided for in Article 37:

(a) the practical arrangements for the cooperation and coordination between the Commission and Member States provided for in Article 37;

(b) the practical arrangements for the cooperation and coordination between the Commission and Member States provided for in Article 37.

Updated MS comments on ST 9971/21 - Presidency compromise text on DMA Proposal - ARTICLES (739 rows)
2. The power to adopt delegated acts referred to in Articles 3(5)(6) and 10(9)(1) shall be conferred on the Commission for a period of five years from DD/MM/YYYY. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of the period of five years. The delegation of power shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of the text of the delegation of power referred to in Articles 3(5)(6) and 10(9)(1).

3. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Inter-institutional Agreement of 13 April 2016 on Better Law-Making.

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6. A delegated act adopted pursuant to Articles 3(5)(6) and 10(9)(1) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of the text of the delegated act to the European Parliament and to the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or the Council.

7. The delegated act referred to in Articles 3(5)(6) and 10(9)(1) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union.
The Commission shall be assisted by a committee (the Digital Markets Advisory Committee). That committee shall be a committee of experts, as defined in Regulation (EU) No 182/2011, having regard to the legitimate interest in the protection of professional secrecy that make the decision public together with the individual decision. Where the opinion of the committee is to be obtained by written procedure, that procedure shall be commenced without result within a period of 30 days from the date of the request for its opinion. Where the opinion of the committee is to be obtained by written procedure, it shall be notified to the addressee of the individual decision together with the individual decision. Where the opinion of the committee is to be obtained by written procedure, it shall be notified to the addressee of the individual decision. Where the opinion of the committee is to be obtained by written procedure, the individual decision together with the individual decision. Where the opinion of the committee is to be obtained by written procedure, the individual decision together with the individual decision. Where the opinion of the committee is to be obtained by written procedure, the individual decision together with the individual decision.
1. By DD/MM/YYYY, and subsequently every three years, the Commission shall evaluate this Regulation and report to the European Parliament, the Council and the European Economic and Social Committee.

2. The evaluations shall establish whether it is required to modify, add or remove additional rules, including those regarding the list of core platform services laid down in point 2 of Article 2, the obligations laid down in Articles 5 and 6 and their enforcement, which may be required to ensure that digital markets across the Union are contestable and fair. Following the evaluations, the Commission shall take appropriate measures, which may include legislative proposals in accordance with Article 10.

The evaluations shall also establish whether it is required to modify, add or remove rules concerning the designation of gatekeepers under Articles 3.
### Article 39

#### Entry into force and application

1. **This Regulation shall enter into force on the twentieth day following that of its publication in the **[Official Journal of the European Union](https://eur-lex.europa.eu)***.

2. **This Regulation shall apply from six months after its entry into force.**

#### Comments:

- LU
  
  - 1. This Regulation shall apply from six months after its entry into force.
  
  - 2. Eighteen months seems to be a more appropriate timeline to allow for the implementation of the measures to be in place.

#### SE

- Comments:
  
  - SE
    
    - Drawing up the report referred to in paragraph 1.
    
    - Information they have that the Commission may require for the purpose of drawing up the report referred to in paragraph 1.

---

*Updated MS comments on ST 9971/21 - Presidency compromise text on DMA Proposal - ARTICLES (139 rows)*
**LT would welcome a deadline which would allow adequate time period for the MSs as well as the Cion to prepare for the implementation of the DMA.**

**IE (Drafting):**

This Regulation shall apply from nine months after its entry into force.

**IE (Comments):**

Ireland still has concerns about the DMA’s timeline for entry into force. Transposition is unrealistic and with the current time dedicated to the competent authorities and the 6 month currently dedicated to obligations but the Compromise text formalises new roles for National and application. We do appreciate the timeline here corresponds with the current milestones on the DMA’s implementation. However, Articles 3, 15, 18, 19, 20, 21, 26, 27, 30, 31 and 34 shall apply from [date of entry into force of this Regulation].

Done at Brussels,

For the European Parliament

For the Council

The President

The President
<table>
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<tr>
<td>LT welcomes the compromise text as it makes a big step forward to provide greater clarity and certainty for not only legislators but also business community. However, LT still maintains general scrutiny.</td>
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<tr>
<td>BE reservation. We maintain our scrutiny reservation and reserve our right for further comments during the course of the negotiations.</td>
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