Council of the European Union
General Secretariat

Brussels, 03 September 2021

Interinstitutional files:
2020/0374(COD)

WK 8877/2021 REV 3 ADD 1

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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 additionnal table with updated MS comments on articles of the compromise text (doc. ST 9971/21).

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

Presidency 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 – IE – BE – CZ – FI – EE – SE – LV - ES** **Drafting suggestions and comments**
HAVE ADOPTED THIS REGULATION:	
Chapter I	
Subject matter, scope and definitions	
Article 1 Subject-matter and scope	
1. The purpose of this Regulation is to contribute to the proper functioning of the internal market by layings down harmonised rules ensuring contestable and fair markets in the digital sector across the Union where gatekeepers are present.	LU (Comments): Strong support. Recital 7 needs to be adjusted accordingly, see our comments for recital 7. LT (Comments): LT supports the change* as proper functioning of the internal market should remain DMA' main goal. *here and further in the text LT supports the changes/new additions if not stated otherwise.

	LV (Drafting): 1. The aims of this Regulation are to: (a) lay down harmonised rules ensuring contestable and fair markets in the digital sector across the Union where gatekeepers are present. **(b) achieve a high level of end user and consumer protection in the digital sector where 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.
2. This Regulation shall apply to core platform services provided or offered by gatekeepers to business users established in the Union or end users established or located in the Union, irrespective of the place of establishment or residence of the gatekeepers and irrespective of the law otherwise applicable to the provision of service.	

3. This Regulation shall not apply to markets:	
(a) related to electronic communications networks as defined in point (1) of Article 2 of Directive (EU) 2018/1972 of the European Parliament and of the Council[1];	
(b) related to electronic communications services as defined in point (4) of Article 2 of Directive (EU) 2018/1972 other than those related to interpersonal communication services as defined in point (4)(b) of Article 2 of that Directive.	ES (Drafting): (b) related to electronic communications services as defined in point (4) of Article 2 of Directive (EU) 2018/1972 other than those related to **number-independent** interpersonal communication services as defined in point (4)(b) of Article 2 of that Directive. ES (Comments): It could be necessary to further clarify the connection and coexistence of the DMA and the European Electronic Communications Code.
4. With regard to interpersonal communication services this Regulation is without prejudice to the powers and tasks granted to the national regulatory and other competent authorities by virtue of Article 61 of Directive (EU) 2018/1972.	FI (Comments): (Drafting):

[1] Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (Recast) (OJ L 321, 17.12.2018, p. 36).

<table>
<tr><td></td><td>Art. 4a
“Union and national law on the protection of personal data shall apply to any personal data processed in connection with this Regulation. In particular, this Regulation shall be without prejudice to Regulation (EU) 2016/679 and Directive 2002/58/EC, including the powers and competences of supervisory authorities. In the event of conflict between the provisions of this Regulation and Union or national law on the protection of personal data, Union or national law prevails. This Regulation does not create a legal basis for the processing of personal data and does not alter any obligations and rights set out in Regulation (EU) 2016/679 or Directive 2002/58/EC.”

(Comments):
FI supports SK suggestion to add similarly to the DGA proposal (Art. 1 par. 1) - and for the sake of legal certainty, to accent the relationship with other legal acts, especially that of GDPR, on which the Regulation itself refers to in its provisions.</td></tr>
<tr><td></td><td></td></tr>
<tr><td>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. 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 where these obligations <s>are unrelated to</s><u>do not result from</u> 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.</td><td>LU

(Drafting):

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. <s>This is without prejudice to rules pursuing other legitimate public interests, in compliance with Union law.</s> 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<u>, for matters outside the scope of this Regulation and</u> where these obligations are</td></tr>
</table>

	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.~~** LU (Comments): See joint BE-LU proposal in document WK 9702 2021 INIT. 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 and uniform application, inherent to a Regulation as a legislative instrument, into a minimum harmonisation Directive that allows Member States to complement and/or make more stringent the agreed Union rules at national level. This would directly undermine the objective and the logic of the DMA, and is not in line with Better Regulation principles. See also comments on recitals 6, 7, 8 and 9. LT (Comments): In order to mitigate the risk of fragmentation and safeguard the legal basis of the DMA, Article 114 TFEU, LT supports the amendments proposed by BE and LU. LT could support further clarification on the relation between DMA and national law. However, any other amendments to Art 1.5 should be made in the light of the aforementioned legal basis and an opinion of the Council Legal Services. IE

	(Drafting): In order to ensure the frictionless and coherent application of this Regulation throughout the internal marker 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 obligations outlined in this Regulation. 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. 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 where these obligations ~~are 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. IE (Comments): It is important to state clearly in Article 1 the Commission will be the sole enforcer of this Regulation.

	In order to mitigate the risk of fragmentation and safeguard the legal basis of the DMA, Article 114 TFEU, IE supports the amendments proposed by BE and LU BE (Drafting): 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. In particular, n~~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~~are 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~~. BE (Comments): **BE:** cfr. BE-LU proposal CZ (Comments): CZ agrees with current wording of Article 1 par. 5; however, we would support also more significant changes, which would specify the relationship between DMA and other EU/MS regulations in detail, and which would put less emphasis on legitimate public interests of MS regulations; that could benefit to lower level of fragmentation of rules applied on gatekeepers.

	FI (Comments): (Drafting): 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.**~~ 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 ~~**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.**~~ (Comments:) 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. FI considers that Art. 1(5) could be deleted, similarly as BE-LU proposes, but supports the proposed compromise text in Art. 1(5). EE (Drafting): 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.~~

	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 ~~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.~~ EE (Comments): EE supports the proposal on Article 1(5) and relevant recitals 6-9 made by BE-LU on 19 July 2021. ES (Comments): It is important to consider that, according to the clarifications of the Council Legal Service, the harmonization effect and the reduction of market fragmentation would not be just the aim of the proposal, but a condition for the adequacy of the legal basis of Article 114 TFEU. In this sense, any modification of Article 1(5) and (6) should not hamper this harmonization effect.
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 by associations of undertakings, concerted practices and abuses of dominant positions; national competition rules prohibiting other forms of unilateral conduct insofar as they are applied to undertakings other than gatekeepers	LT (Comments): LT could support further clarification on the relation between DMA and competition law, including clearer description of wordings used in Art.

or amount to imposing additional obligations on gatekeepers; Council Regulation (EC) No 139/2004[2] and national rules concerning merger control; Regulation (EU) 2019/1150 and Regulation (EU) …./.. of the European Parliament and of the Council[3].	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. LT could support any technical adjustments of Art 1.6 as at the moment para 6 mainly covers competition aspects and, oddly enough, – only DSA, while recital 11 provides the whole list of possible "without prejudice" legal acts (additional paragraph, which would cover other than competition legal acts might be an answer). LV (Drafting): 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 by associations of undertakings, concerted practices and abuses of dominant positions; national competition rules prohibiting other forms of unilateral conduct insofar as they are applied to undertakings other than gatekeepers or amount to imposing additional obligations on gatekeepers; Council Regulation (EC) No 139/200438 and national rules concerning merger control; Regulation (EU) 2019/1150**; <u>Directive 2005/29/EC ; Council Directive 93/13/EEC</u>** and Regulation (EU) …./.. of the European Parliament and of the Council. LV

[2] Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) (OJ L 24, 29.1.2004, p. 1).

[3] Regulation (EU) …/.. of the European Parliament and of the Council – proposal on a Single Market For Digital Services (Digital Services Act) and amending Directive 2000/31/EC.

	(Comments): *Regulation should build upon and contribute to 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.*
7. ~~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~~ cooperate~~ion~~ and coordinate~~ion~~ in their enforcement actions on the basis of the principles and rules established in Article 32a.	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. SE (Comments): SE suggests a clarification of the amendment.
Article 2 Definitions	
For the purposes of this Regulation, the following definitions apply:	
(1) 'Gatekeeper' means ~~a provider of~~an undertaking providing core platform services designated pursuant to Article 3;	
(2) 'Core platform service' means any of the following:	LU

	(Comments): 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 (Comments): LT could support any further clarification on what constitutes *one* CPS. LT preliminary could support the list, proposed by the Cion. Any suggestion to include *additional* CPSs, in our view, would require proper Impact Assessment, as stated in the Interinstitutional Agreement.
(a) online intermediation services;	
(b) online search engines;	
(c) online social networking services;	
(d) video-sharing platform services;	
(e) number-independent interpersonal communication services;	LU (Drafting): ~~(e) number-independent interpersonal communication services;~~

	LU (Comments): 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 (Comments): 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.
(f) operating systems;	
(g) cloud computing services;	LT (Comments): 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.
(h) advertising services, including any advertising networks, advertising exchanges and any other advertising intermediation services, provided ~~by a provider of~~an undertaking providing any of the core platform services listed in points (a) to (g);	LT (Comments): LT can support the change (with a minor editorial adjustment as already noted by SE). At the same time, we agree that the definition or an

	explanation in the recitals of the "advertising services" and "advertising intermediation services" could provide more legal clarity. BE (Drafting): (h) advertising services, including any advertising networks, advertising exchanges and any other advertising intermediation services, provided by ~~by a provider of~~an undertaking providing any of the core platform services listed in points (a) to (g); SE (Drafting): advertising services, including any advertising networks, advertising exchanges and any other advertising intermediation services, provided by ~~by a provider of~~an undertaking providing any of the core platform services listed in points (a) to (g); SE (Comments): SE suggests a minor linguistic change of the amendment.
	BE (Drafting): (i) web browsers; BE (Comments):

	BE supports the proposal made by DE and FR to include web browsers in the list of core platform services.
(3) ‘Information society service’ means any service within the meaning of point (b) of Article 1(1) of Directive (EU) 2015/1535;	
(4) ‘Digital sector’ means the sector of products and services provided by means of or through information society services;	
(5) ‘Online intermediation services’ means services as defined in point 2 of Article 2 of Regulation (EU) 2019/1150;	
(6) ‘Online search engine’ means a digital service as defined in point 5 of Article 2 of Regulation (EU) 2019/1150;	
(7) ‘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;	
(8) ‘Video-sharing platform service’ means a service as defined in point (aa) of Article 1(1) of Directive (EU) 2010/13[4];	BE (Drafting): (8) ‘Video-sharing platform service’ means a service as defined in point (a~~a~~) of Article 1(1) of Directive (EU) 2010/13[5];

[4] 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).

	BE (Comments): **BE:** it seems that there is no point aa.
(9) ‘Number-independent interpersonal communications service’ means a service as defined in point 7 of Article 2 of Directive (EU) 2018/1972;	
(10) ‘Operating system’ means a system software which controls the basic functions of the hardware or software and enables software applications to run on it;	
(11) ‘Cloud computing services’ means a digital service as defined in point 19 of Article 4 of Directive (EU) 2016/1148 of the European Parliament and of the Council[6];	
(12) ‘Software application stores’ means a type of online intermediation services, which is focused on software applications as the intermediated product or service;	
(13) ‘Software application’ means any digital product or service that runs on an operating system;	

[5] 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).

[6] Directive (EU) 2016/1148 of the European Parliament and of the Council of 6 July 2016 concerning measures for a high common level of security of network and information systems across the Union (OJ L 194, 19.7.2016, p. 1).

(14) ‘Ancillary 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 Article 3(j) of Directive (EU) 2015/2366, fulfilment, identification or advertising services;	LT (Comments): 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 (Comments): Further clarification on the list of services that would be included as “ancillary service” may be needed in order to ensure legal certainty and predictability.
(15) ‘Identification service’ means a type of ancillary 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 (Comments): LT supports MSs, which ask for greater clarity in the DMA itself (preferably in the operational part) what constitutes active monthly end users. ES (Comments): The definition of active monthly end users shall be specified in an Annex,

	notwithstanding 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. Commission´s input at this point would be highly appreciated.
(17) ‘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;	LT (Comments): LT supports MSs, which ask for greater clarity in the DMA itself (preferably in the operational part) what constitutes active monthly business users. ES (Comments): The definition of yearly active business users shall be specified in an Annex, notwithstanding 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. Commission´s input at this point would be highly appreciated.
(18) ‘Ranking’ means the relative prominence given to goods or services offered through online intermediation services or online social networking services, or the relevance given to search results by online search engines, as presented, organised or communicated by the providers of online intermediation services or of online social networking services or by providers of online search engines, respectively, whatever the technological means used for such presentation, organisation or communication;	

(19) ‘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;	
(20) ‘Personal data’ means any information as defined in point 1 of Article 4 of Regulation (EU) 2016/679;	
(21) ‘Non-personal data’ means data other than personal data as defined in point 1 of Article 4 of Regulation (EU) 2016/679;	
(22) ‘Undertaking’ means all linked enterprises or connected undertakings that form a group through the direct or indirect control of an enterprise or undertaking by another and that are engaged in an economic activity, regardless of their legal status and the way in which they are financed;	CZ (Comments): CZ supports the use of the term “undertaking”, which is an established concept in competition law.
(23) ‘Control’ means the possibility of exercising decisive influence on an undertaking, as understood in Article 3(2) of Regulation (E~~U~~C) No 139/2004~~.~~;	
(24) ‘Turnover’ means the amount derived by an undertaking as defined in Article 5(1) of Regulation (EC) No 139/2004;	BE (Comments): **BE** we support the introduction of this definition that provides more clarity.
(25) ‘Profiling’ means profiling as defined in Article 4(4) of Regulation (EU) 2016/679;	BE

	(Comments): **BE** supports the introduction of this definition.
(26) ‘Consent’ of the data subject means consent as defined in Article 4(11) of Regulation (EU) 2016/679;	BE (Comments): **BE** 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.	ES (Comments): See comment in Article 33a.
Chapter II	
Gatekeepers	
Article 3 Designation of gatekeepers	
1. ~~A provider of core platform services~~An undertaking shall be designated as gatekeeper if:	EE (Comments): EE supports reference to ‘undertaking’ instead of ‘provider’.

	ES (Comments): Spain welcomes this modification as it provides legal certainty to the text. References to “provider of core platform services” should be modified also in the recitals.
(a) it has a significant impact on the internal market;	
(b) it ~~operates~~provides a core platform service which serves as an important gateway for business users to reach end users; and	
(c) it enjoys an entrenched and durable position in its operations or it is foreseeable that it will enjoy such a position in the near future.	
2. ~~A provider of core platform services~~An undertaking shall be presumed to satisfy:	
(a) the requirement in paragraph 1 point (a) where ~~the undertaking to which it belongs~~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~~its average market capitalisation or ~~the~~its equivalent fair market value ~~of the undertaking to which it belongs~~ amounted to at least EUR 65 billion in the last financial year, and it provides ~~a~~the same core platform service in at least three Member States;	
(b) the requirement in paragraph 1 point (b) where it provides a core platform service that has more than 45 million monthly active end users established or located in the Union and more than 10 000 yearly active	LT

business users established in the Union in the last financial year;	(Comments): LT supports MSs, which ask for greater clarity in the DMA itself (preferably in the operational part) what constitutes active monthly end users/business users. ES (Drafting): (b) the requirement in paragraph 1 point (b) where it provides a core platform service that has more than 45 million monthly active end users established or located in the Union and more than 10 000 yearly active 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/the methodology] set out in the Annex to this Regulation.** ES (Comments): A reference to the Annex might be needed. The drafting of IMCO´s rapporteur´s draft report has been used as inspiration for this drafting suggestion. It is important that the Council include an Annex in the consensus text for the potential negotiation with the Parliament.
for the purpose of the first subparagraph, monthly active end users shall refer to the average number of monthly active end users throughout the largest part of the last financial year;	LT (Comments):

	LT 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~~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.
(c) the requirement in paragraph 1 point (c) where the thresholds in point (b) were met in each of the last three financial years.	
3. Where ~~a provider of~~an undertaking providing core platform services meets all the thresholds in paragraph 2, it shall notify the Commission thereof within three months after those thresholds are satisfied and provide it with the relevant information relating to the quantitative thresholds identified in paragraph 2~~.~~. That notification shall include the relevant information relating to the quantitative thresholds identified in paragraph 2 for each of the core platform services of the ~~provider~~undertaking that meets the thresholds in paragraph 2 point (b). The notification shall be updated whenever other core platform services individually meet the thresholds in paragraph 2 point (b).	LU (Drafting): ~~A failure by a relevant~~Should the Commission consider that an ~~provider of~~undertaking providing core platform services meets all the thresholds provided in paragraph 2, but has failed to notify the required information pursuant to the first subparagraph of this paragraph, the Commission shall require that undertaking pursuant to Article 19 to provide the relevant information relating to the quantitative thresholds identified in paragraph 2 within 10 working days. The failure by the undertaking providing core platform services to comply with the Commission's request pursuant to

	Article 19 shall not prevent the Commission from designating ~~these providers~~that undertaking as a gatekeepers 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 ~~pursuant to~~ 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 shall designate a gatekeeper not solely based on "any information available" but there needs to be clear evidence and demonstration that the quantitative thresholds are met. "Any information" is too vague and unreliable. ES (Comments): This amendment is welcome as it ensures legal certainty while maintaining incentives for gatekeepers to notify. The information request that would be done by the Commission when an undertaking does not notify ensures legal certainty and may work as an alternative to a pre-notification dialogue. At the same time, the incentive to notify would be preserved with the inclusion of fines in Article 16. It would be needed to stress in the correspondent recital the importance of a clear and specific designation procedure in order to reinforce legal certainty and guarantees, what ultimately ensures an effective implementation of the DMA.

~~A failure by a relevant~~Should the Commission consider that an ~~provider of~~undertaking providing core platform services meets all the thresholds provided in paragraph 2, but has failed to notify the required information pursuant to the first subparagraph of this paragraph, the Commission shall require that undertaking pursuant to Article 19 to provide the relevant information relating to the quantitative thresholds identified in paragraph 2 within 10 working days. The failure by the undertaking providing core platform services to comply with the Commission's request pursuant to Article 19 shall not prevent the Commission from designating ~~these providers~~that undertaking as a gatekeeper~~s~~ based on any other information available to the Commission. Where the undertaking providing core platform services complies with the request, the Commission shall apply the procedure set out in ~~pursuant to~~ paragraph 4 ~~at any time~~.	LU (Drafting): ~~A failure by a relevant~~Should the Commission consider that an ~~provider of~~undertaking providing core platform services meets all the thresholds provided in paragraph 2, but has failed to notify the required information pursuant to the first subparagraph of this paragraph, the Commission shall require that undertaking pursuant to Article 19 to provide the relevant information relating to the quantitative thresholds identified in paragraph 2 within 10 working days. The failure by the undertaking providing core platform services to comply with the Commission's request pursuant to Article 19 shall not prevent the Commission from designating ~~these providers~~that undertaking as a gatekeeper~~s~~ 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 ~~pursuant to~~ 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 shall designate a gatekeeper not solely based on "any information available" but there needs to be clear evidence and demonstration that the quantitative thresholds are met. "Any information" is too vague and unreliable. SE (Drafting): ~~A failure by a relevant~~Should the Commission consider that an ~~provider of~~undertaking providing core platform services meets all the thresholds provided in paragraph 2, but has failed to notify the required information

	pursuant to the first subparagraph of this paragraph, the Commission shall require that undertaking pursuant to Article 19 to provide the relevant information relating to the quantitative thresholds identified in paragraph 2 ~~within 10 working days~~. SE (Comments): SE considers that it may be an advantage for the Commission to be able to be flexible with the time limit and adapt it to circumstances in each individual case. Furtheron, the forms of request for information are stated in Article 19, which is referred to in the provision in question. That Article provides that the Commission shall fix the time-limit within which the information is to be submitted (p. 3 or 4, depending on the type of injunction). SE questions if it would not be best to mainain that order. It allows the Commission to take into account circumstances in the individual case. In addition, there are sanctions both for missing the three-month deadline in the first subparagraph of Article 3(3) and for missing the deadline set by the Commission under Article 19 (Article 26(2)(a) and (d)).

4. The Commission shall, without undue delay and at the latest ~~60~~45 working days after receiving the complete information referred to in paragraph 3, designate the ~~provider of~~undertaking providing core platform services that meets all the thresholds of paragraph 2 as a gatekeeper, unless that ~~provider~~undertaking, with its notification, 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,~~ the ~~provider~~undertaking exceptionally does not satisfy the requirements of paragraph 1 although it meets all the thresholds in paragraph 2.	LU (Drafting): 4. The Commission shall, without undue delay and at the latest ~~60~~45 working days after receiving the complete information referred to in paragraph 3, designate the ~~provider of~~undertaking providing core platform services that meets all the thresholds of paragraph 2 as a gatekeeper, unless that ~~provider~~undertaking, with its notification, 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,~~ the ~~provider~~undertaking **~~exceptionally~~** does not satisfy the requirements of paragraph 1 although it meets all the thresholds in paragraph 2. LU (Comments): In general, we prefer the Commission's wording as this new one is very complex and does not add any new elements. LT (Comments): 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 gatekeepers. Also a question for clarification. Do we understand correctly that it is possible to rebut the presumption *only* at the stage of *notification* (Art 3.3 para 1) and not in the later stage when Art 19 is to be triggered (Art 3.3 para 2) as Art 3.4 only refers to *notification* ("unless that ~~provider~~undertaking, with its notification, presents sufficiently substantiated arguments")?

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<tr><td></td><td>IE

(Drafting):

receiving the complete information referred to in paragraph 3, adopt a decision to designate the ~~provider of~~undertaking providing core platform services that meets all the thresholds of paragraph 2 as a gatekeeper, unless that ~~provider~~undertaking, with its notification, 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,~~ the ~~provider~~undertaking exceptionally does not satisfy the requirements of paragraph 1 although it meets all the thresholds in paragraph 2.</td></tr>
<tr><td></td><td></td></tr>
<tr><td>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 2, the Commission shall designate the undertaking as a gatekeeper, in accordance with the procedure laid down in Article 15(3), if it concludes that the undertaking was not able to demonstrate that the relevant core platform service it provides does not satisfy the requirements of paragraph 1~~apply paragraph 6 to assess whether the criteria in paragraph 1 are met~~.</td><td>LU

(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 2, the Commission shall designate the undertaking as a gatekeeper, in accordance with the procedure laid down in Article 15(3), if it concludes that the undertaking was not able to demonstrate that the relevant core platform service it provides does not satisfy the requirements of paragraph 1~~apply paragraph 6 to assess whether the criteria in paragraph 1 are met~~.

LU

(Comments):

We prefer the Commission’s wording as this new one is very complex and does not add any new elements.</td></tr>
</table>

	LT (Comments): LT still analysis the paragraph as the legal grounds for the Cion to reject the rebuttal seems too vague ("*was not able to demonstrate* that the relevant core platform service it provides does not satisfy the requirements of paragraph 1"). LT joins other MSs asking why a reference to para 6 was deleted/how the new paragraph in question relates to para 6. In other words, the compromised text lacks clarity regarding how many and which legal grounds the Cion can use to designate a company as a gatekeeper. ES (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 2, the Commission shall designate the undertaking as a gatekeeper, in accordance with the procedure laid down in Article 15(3), if it concludes that the undertaking was not able to demonstrate that the relevant core platform service it provides does not satisfy the requirements of paragraph 1 [**taking into account paragraph 6**]~~apply paragraph 6 to assess whether the criteria in paragraph 1 are met~~. ES (Comments): The new wording may create doubts on the elements/criteria that should be taken into account to assess if the requirements of paragraph 1 are met. At his point is important to reduce contestability in front of the CJEU. To this extent, the criteria of Article 3(6) should still at least be considered, using the same criteria as in the qualitative designation pursuant paragraph

	6.
5. 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~~the methodology to market and technological developments where necessary, in particular as regards the threshold in paragraph 2, point (a).	LT (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 (operational part or the Annex). This would ensure not only legal clarity but procedural certainty as well as there is always 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 Cion will have to adopt). As a compromise, LT could support DK comments and suggestions regarding Art 3.5. SE (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~~the methodology related to market and technological developments where necessary, in particular as regards the threshold in paragraph 2, point (a). SE (Comments): See proposal for addition in recital 17 (in line with earlier comments from SE).

	ES (Drafting): 5. 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, **to update [the list of indicators/the methodology] set out in the Annex to this Regulation** and to regularly adjust ~~it~~the methodology [~~the medhodology it~~] to market and technological developments where necessary, in particular as regards the threshold in paragraph 2, point (a).
6. The Commission may ~~identify~~designate as a gatekeeper, in accordance with the procedure laid down in Article 15, any ~~provider of~~undertaking providing core platform services that meets each of the requirements of paragraph 1, but does not satisfy each of the thresholds of paragraph 2~~, or has presented sufficiently substantiated arguments in accordance with paragraph 4~~.	LT (Comments): LT: the same comment as referred to in Art 3.4 para 2.
For that purpose, the Commission shall take into account some or all of the following elements, insofar as relevant for the undertaking under consideration:	LU (Drafting): For that purpose, the Commission shall take into account ~~**some or all of**~~ the following elements, insofar as relevant for the undertaking under consideration: LU (Comments): It should be clear that all of these elements need to be looked at by the Commission, otherwise this creates significant legal uncertainty. The

	addition "insofar as relevant for the undertaking under consideration" is sufficient to allow for the necessary flexibility depending on the company concerned.
(a) the size, including turnover and market capitalisation, operations and position of the ~~provider of~~undertaking providing core platform services;	IE (Drafting): the size, including turnover and market capitalisation, operations and position of the ~~provider of~~undertaking providing core platform services or the availability of equally effective ways for business users and end users to reach each other; IE (Comments): 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. Article 3(6) needs to look beyond purely company dynamics to provide a holistic assessment.
(b) the number of business users ~~depending on~~using the core platform service to reach end users and the number of end users;	
(c) ~~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 capabilities;	LU (Drafting): (c) **entry barriers derived from** ~~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 capabilities; LU (Comments): The Commission's Impact Assessment is clear that network effects on their own are not problematic. Rather, what is problematic is when they lead to barriers to entry into the market and prevent competitors from competing. This is what we should focus on rather than leave this provision so broad. LT (Comments): LT would have preferred the Cion's version ("entry barriers derived from network effects<…>") as a network effect in itself does not constitute a negative situation. Therefore, we would be happy to see broader explanation (in a text or recitals) justifying the change as well as an explanation on how the Cion would designate a gatekeeper based on a network effect. IE (Drafting): ~~entry barriers derived from~~ network effects, ecosystem effects and data driven advantages, in particular in relation to the ~~provider's~~undertaking's access to and collection of personal and non-personal
(d) scale and scope effects the ~~provider~~undertaking benefits from, including with regard to data;	

(e) business user or end user lock-in, including switching costs and behavioural bias reducing the ability of business users and end users to switch or multi-home;	IE (Drafting): business user or end user lock-in, including switching costs, and behavioural bias reducing and the ability of business users and end users to switch or multi-home; IE (Comments): ibid
(f) other structural marketrelevant 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.	LT (Comments): LT still analysis the paragraph. SE (Drafting): other structural market, 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. SE

	(Comments): SE understands it as the text after "such as" are examples and do not constitue an exhaustive list of characteristics. ES (Comments): Due to the fact that 3(6) is an open list of caracteristics, it might be better to include this reference to conglomerate corporate structure or vertical integration in the recitals.
In conducting its assessment, the Commission shall take into account foreseeable developments of these elements.	
Where the ~~provider of~~undertaking providing a core platform service that satisfies the quantitative thresholds of paragraph 2 but has presented, according to paragraph 4, sufficiently substantiated arguments that it does not meet criteria in paragraph 1, fails to comply with the investigative measures ordered by the Commission in a significant manner and the failure persists after the ~~provider~~undertaking has been invited to comply within a reasonable time-limit and to submit observations, the Commission shall be entitled to designate that ~~provider~~undertaking as a gatekeeper.	LT (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. LT would welcome clarification defining "*investigative measures ordered by the Commission*" (which measures?/according to which Art(s)?)
Where the ~~provider of~~undertaking providing a core platform service that does not satisfy the quantitative thresholds of paragraph 2 fails to comply with the investigative measures ordered by the Commission in a significant manner and the failure persists after the ~~provider~~undertaking has been invited to comply within a reasonable time-limit and to submit observations, the Commission shall be entitled to designate that	LT (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

~~provider~~undertaking as a gatekeeper based on facts available.	grounds of a designation process seem too blended. LT would welcome clarification defining "*investigative measures ordered by the Commission*" (which measures?/according to which Art(s)?)
7. For each ~~gatekeeper~~undertaking ~~identified~~designated as gatekeeper pursuant to paragraph 4 or paragraph 6, the Commission shall ~~identify the relevant undertaking to which it belongs and~~ list the relevant core platform services that are provided within that same undertaking and which individually serve as an important gateway for business users to reach end users as referred to in paragraph 1(b).	LT (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~~designated as gatekeeper pursuant to paragraph 4 or paragraph 6, the Commission shall ~~identify the relevant undertaking to which it belongs and~~ list the relevant core platform services that are provided within that same undertaking and which individually serve as an important gateway for business users to reach end users as referred to in paragraph 1(b). For each core platform service identified, the Commission shall specify with which of the obligations outlined in Articles 5 and 6 the gatekeeper has to comply with. IE (Comments): In the interest of legal certainty, the relevant obligations for each CPS

	should be clearly specified. ES (Drafting): 7. For each ~~gatekeeper~~undertaking ~~identified~~designated as gatekeeper pursuant to paragraph 4 or paragraph 6, the Commission shall ~~identify the relevant undertaking to which it belongs and~~ list **in the designation decision** the relevant core platform services that are provided within that same undertaking and which individually serve as an important gateway for business users to reach end users as referred to in paragraph 1(b). ES (Comments): Technical amendment: it is considered best to refer to an administrative act (the designation decision).
8. 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 pursuant to paragraph 7 of this Article.	LU (Drafting): 8. The gatekeeper shall comply with the **applicable** obligations laid down in Articles 5 and 6 within six months after a core platform service has been included in the list pursuant to paragraph 7 of this Article. LU (Comments): Not all obligations will apply to all gatekeepers, as Articles 5 and 6 themselves indicate. This is to reflect this and make the text consistent.

	LT (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, mentioned in Art 3.8. ES (Drafting): 8. 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. ES (Comments): Technical amendment: it is considered best to refer to an administrative act (the designation decision) instead of a list.
Article 4 Review of the status of gatekeepers	
1. The Commission may upon request or its own initiative reconsider, amend or repeal at any moment a decision adopted pursuant to Article 3 for one of the following reasons:	

(a) there has been a substantial change in any of the facts on which the decision was based;	
(b) the decision was based on incomplete, incorrect or misleading information ~~provided by the undertakings~~.	
2. 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 of the gatekeeper which individually serve as an important gateway for business users to reach end users as referred to in Article 3(1)(b) needs to be adjusted.	LT (Comments): LT: questions for clarification. As we understand, Art 4 covers review of a gatekeeper status (a company, which is already designated as such). In this context we would like to know the reason to include a reference to ”<..> *or whether new providers of core platform services satisfy those requirements*”. It would seem that *new providers* of CPSs normally fall under market investigation process (e.g. Art 15). IE (Drafting): The Commission shall regularly, and at least every 2 years, and at the request based on the first subparagraph of the designated gatekeeper, 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 of the gatekeeper which individually serve as an important gateway for business users to reach end users as referred to in Article 3(1)(b) needs to be

	adjusted. It will also examine the impact on business users as a result of the core platform services' designation as a gatekeeper. IE (Comments): To ensure consistency with Article 4(1). The Review should also look at the impact of designation on business users to identify any unintended consequences.
Where the Commission, on the basis of the~~at~~ review pursuant to the first subparagraph, finds that the facts on which the designation of the ~~providers of~~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 undertaking providing core plaforms services as a gatekeeper.	IE (Drafting): Where the Commission, on the basis of the~~at~~ review pursuant to the first subparagraph, finds that the facts on which the designation of the ~~providers of~~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 undertaking providing core plaforms services as a gatekeeper which shall be made public.
3. The Commission shall publish and update ~~the~~a 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 on-going basis.	ES (Comments): It would be advisable to have a single structured channel to systematically publish the public information and data referred to the DMA, as a transparency tool. See proposal on ~~article 34~~.

Chapter III	
Practices of gatekeepers that limit contestability or are unfair	
Article 5 Obligations for gatekeepers	
In respect of each of its core platform services identified pursuant to Article 3(7), a gatekeeper shall:	LU (Drafting): 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 of end-users,** a gatekeeper shall, **where applicable**: LU (Comments): Compliance with cybersecurity, consumer protection and product safety rules means that a gatekeeper needs to make sure their services remain secure and that users continue to benefit from a safe, functioning and beneficial service. The result of the obligation should avoid any the malfunctioning of a service for the user and jeopardising their privacy. Given that there is no articulation clause on how the DMA works with other legislations, gatekeepers may be faced with conflicting obligations emanating from the DMA and other rules, such as cybersecurity or data protection. We are flexible as to where this clarification is situated in the text, eg it may also be in Article 7.

	Not all obligations will apply to all gatekeepers. The proposed addition "where applicable" is a clarification to that end. LT (Comments): LT: as a general comments: a) we are still analysing Art. 5 and 6 (and corresponding recitals) and therefore reserve the right to provide more comments and suggestions at the later stage. b) we are open to possible changes in Art 5, 6 and, where necessary, – Art 7 (and corresponding recitals), e.g. moving practices from one list to another, that would allow an unambiguous understanding of the obligations and ensure smooth practical implementation of the DMA from the date of its entry into force. c) we support an idea to have a more clear description on which obligations apply to which CPSs. LT supports FI suggestion. BE (Drafting): In respect of the~~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. ES (Drafting): In respect of each of its core platform services identified **in the designation decision** pursuant to Article 3(7), a gatekeeper shall: ES (Comments): Technical amendment: it is considered best to refer to an administrative act (the designation decision).
(a) refrain from combining personal data sourced from ~~these~~any of its core platform services with personal data from any other core platform service or other services offered by the gatekeeper or with personal data from third-party services, and from signing in end users to other services of the gatekeeper in order to combine personal data, unless the end user has been presented with the specific choice and provided consent in the sense of Article 6(1)(a) of Regulation (EU) 2016/679. The gatekeeper may rely on the legal basis included under Article 6(1)(c), (d) and (e) of Regulation (EU) 2016/679, where applicable;	LU (Drafting): (a) refrain from combining personal data sourced from ~~these~~any of its core platform services with personal data from any other core platform service **~~or other services offered by the gatekeeper~~** or with personal data from third-party services, and from signing in end users to other services of the gatekeeper in order to combine personal data, unless the end user has been presented with the specific choice and provided consent in the sense of Article 6(1)(a) of Regulation (EU) 2016/679. The gatekeeper may rely on the legal basis included under Article 6(1)**(b),** (c), (d) and (e) of Regulation (EU) 2016/679, where applicable; LU (Comments):

	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. 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 indirectly be narrowed by the DMA. EE (Comments): EE supports the proposed amendments. Despite the elaborations in recital 36, EE would welcome explicitly clarifying in the article text that, to the extent possible, gatekeepers must offer to those end users, who do not consent to data combination, the same services, which only differ in the level of personalization resulting from the non-cumulation of data. LV (Drafting): (a) refrain from combining personal data sourced from these core platform services with personal data from any other services offered by the gatekeeper or with personal data from third-party services, and from signing in end users to other services of the gatekeeper in order to combine personal data, unless the end user has been presented with the specific choice **<u>of an alternative service not based on data combination</u>**

	and provided consent in the sense of Regulation (EU) 2016/679. **Where the end user has chosen a service not based on data combination, the service in question shall not differ except in the level of personalization resulting from the non-cumulation of personal data.** LV (Comments): *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 the non-cumulation of data. This alternative service must otherwise be of identical quality.*
(b) allow business users to offer the same products or services to end users through third party online intermediation services at prices or conditions that are different from those offered through the online intermediation services of the gatekeeper;	LT (Comments): LT support a ban on the wide MFN and arguments, provided by the Cion', on why narrow MFN prohibition was not included in the DMA. LV (Drafting): (b) allow business users to offer the same products or services to end users through third party online intermediation services **or through their own direct sales channels** at prices or conditions that are different from those offered through the online intermediation services of the gatekeeper; LV (Comments):

	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 also be covered by this Article.
(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;~~, and~~	LT (Comments): LT supports FI suggestion. As for a compromise text, we would be grateful for more explanation what "other channels" could cover, because recital 38 does not provide new information. EE (Drafting): (c) refrain from preventing or restricting ~~allow~~ business users ~~to promote offers~~from engaging in communication and concluding contracts with ~~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;~~, and~~ EE (Comments): This clause, as further explained in recital 38, establishes that the gatekeeper must not take steps – either contractual or technical – in restricting the freedom of business users to engage with its end users that

	it has acquired through the gatekeeper services directly, or prevent end user from accessing content through its CPS, simply because it was purchased outside of gatekeeper's services. The formulation "refrain from" better reflects the logic that while gatekeeper must abide by the above restriction, it shouldn't have an obligation to actively introduce any technical solutions to allow for direct engagement between business and end user (this is especially relevant in context of online marketplaces). An opposite reading of the text – an obligation to create direct communication channel between business and end users to facilitate circumventing gatekeeper's own service – might be disproportionally restrictive to gatekeeper's freedom to conduct business. 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 enjoy comprehensive freedom in interacting with any end users that the business user has acquired through the gatekeeper services.
(cc) allow end users to access and use, through the core platform services of the gatekeeper, content, subscriptions, features or other items by using the software application of a business user, where these items have been acquired by the end users from the relevant business user without using the core platform services of the gatekeeper;	LT (Comments): LT supports FI suggestion. EE (Drafting): (cc) refrain from unreasonably preventing or restrictingallow end users to from accessing and usinge, through the core platform services of the gatekeeper, content, subscriptions, features or other items by using the software application of a business user, where these items have been

	acquired by the end users from the relevant business user without using the core platform services of the gatekeeper; EE (Comments): See first paragraph of the comment on 5(c).
(d) refrain from preventing or restricting business users from raising issues with any relevant public authority, including national courts, relating to any practice of gatekeepers, without prejudice to the right of business users and gatekeepers to lay down in their agreements the terms of use including the use of lawful complaint-handling mechanisms;	BE (Drafting): d) refrain from directly or indirectly preventing or restricting business users from raising issues with any relevant public authority, including national courts, relating to any practice of gatekeepers, without prejudice to the right of business users and gatekeepers to lay down in their agreements the terms of use including the use of lawful complaint-handling mechanisms; BE (Comments): **BE** suggests this amendment for more clarification. EE (Comments): It remains unclear why shouldn't this clause also prohibit gatekeepers from introducing practices that would restrict end users from raising concerns about unfair behaviour by gatekeepers with any relevant

	administrative or other public authorities. LV (Drafting): (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; LV (Comments): *End users must be free to raise issues with any relevant public authority relating to any practice of gatekeepers in the same way as business users.*
(e) refrain from requiring business users or end users to use, and in the case of business users, also to offer or interoperate with, an identification service of the gatekeeper in the context of services offered by the business users using the core platform services of that gatekeeper;	LT (Comments): 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).
(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;	BE (Drafting): (f) refrain from requiring business users or end users to use, 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;

	BE (Comments): **BE** : we suggest to add this wording taken into account the objective of this disposition is to ensure freedom of business users and/or end users to be able to use freely core platforms services without being mandated to use them being integrated with other core platform services and thus to not limit it to "subscribing" or "registering".
(g) 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 publisher, as well as the amount or remuneration paid to the publisher, for the publishing of a given ad and for each of the relevant advertising services provided by the gatekeeper.	
Article 6 Obligations for gatekeepers susceptible of being further specified under Article 7	CZ (Comments): It would be appropriate that the Commision issues guidelines or other documents, which will, among other things, provide a clarity on terms used in this Article.
1. In respect of each of its core platform services identified pursuant to Article 3(7), a gatekeeper shall:	LU (Drafting): 1. 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 of end-users, a gatekeeper shall, **where applicable**: LU (Comments): See above LT (Comments): LT: if the first sentence of Art 5 will be amended as suggested by FI, we believe, the same should be done in Art 6.1. BE (Drafting): 1. In respect of the~~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 is a provision for clarifying this. ES (Drafting): 1. In respect of each of its core platform services identified **in the designation decision** pursuant to Article 3(7), a gatekeeper shall: ES

	(Comments): Technical amendment: it is considered best to refer to an administrative act (the designation decision).
(a) refrain from using, in competition with business users, any data not publicly available, which is generated ~~through activities~~<u>in the context of the use of the relevant core platform services</u> by those business users, including by the end users of these business users, of its core platform services or provided by those business users of its core platform services or by the end users of these business users;	LT (Comments): LT: as this restriction is of a significant importance, we would welcome more clarity, including but not limited to the definitions used, e.g. in competition with; generated ~~through activities~~<u>in the context.</u> BE (Drafting): (a) refrain from using, in competition with business users, any data not publicly available, which is generated ~~through activities~~<u>in the context of the use of the relevant core platform services</u> by those business users <u>or their competitors</u>, including by the end users of these business users <u>or their competitors</u>, of its core platform services or provided by those business users of its core platform services or <u>their competitors or</u> by the end users of these business users <u>or their competitors</u>; BE (Comments): **BE** wonders if it is not desirable to expand this provision in order to not allow a gatekeeper to use in competition with the business users non-publicly available data it generated through the activities of other business users? We hereby think of the example where a gatekeeper marketplace could

	use in competition with the shoe retailer "A" non-publicly available data that was generated by the shoe retailers "B" to "Z" on the marketplace. SE (Drafting): (a) refrain from using, in competition with business users, any data not publicly available, which is generated through activities~~through activities~~~~in the context of the use of the relevant core platform services~~ by those business users, including by the end users of these business users, of its core platform services or provided by those business users of its core platform services or by the end users of these business users; SE (Comments): According to SE the original proposed text is clearer and should be reintroduced.
(b) allow end users to un-install any ~~pre-installed~~ software applications on ~~its core platform service~~an operating system the gatekeeper provides or effectively controls as easily as any software application installed by the end user at any stage without prejudice to the possibility for a gatekeeper to restrict such un-installation in relation to software applications that are essential for the functioning of the operating system or of the device and which cannot technically be offered on a standalone basis by third-parties;	LT (Comments): LT supports the amendment proposed in the compromise text. EE (Comments): EE supports the amendment proposed in the compromise text. SE

	(Comments): SE has a question concerning why the obligation is formulated more narrowly. LV (Drafting): 1. (b) allow end users **and business users** to un-install any pre-installed software applications on its core platform service without prejudice to the possibility for a gatekeeper to restrict such un-installation in relation to software applications **that the gatekeeper can prove** are essential for the functioning of the operating system or of the device and which cannot technically be offered on a standalone basis by third-parties; LV (Comments): *The right to un-install apps should also explicitly be included for device manufacturers and device providers in order to 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 un-installation 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 that gatekeeper and allow these software applications or software application stores to be accessed by means other than the core platform services of that gatekeeper. The gatekeeper shall not be prevented from taking necessary and proportionate measures to ensure that third party software	LU (Drafting): (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 that

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;	gatekeeper and allow these software applications or software application stores to be accessed by means other than the core platform services of that gatekeeper. **unless this would** ~~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;~~ LU (Comments): If the installation of third party apps threatens the protection of personal data, or if it poses risks to the integrity of the systems, then the obligation does not have to be implemented. Otherwise, this would be detrimental to end-users and business users alike (eg the device would stop functioning). This cannot be the result of an obligation. BE (Drafting): (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 that gatekeeper and allow and enable these software applications or software application stores to be accessed by means other than the core platform services of that gatekeeper. 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 integrity of the hardware or operating system provided by the gatekeeper, provided that such proportionate measures are duly justified by the gatekeeper;

	BE (Comments): **BE** suggests this adding. LV (Drafting): 1. (c) allow the installation, **setting as the default, by business users and end users**, and effective use of third party software applications or software application stores using, or interoperating with, operating systems of that gatekeeper and allow these software applications or software application stores to be accessed by means other than the core platform services of that 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 and justified and there are no less restrictive means to safeguard the integrity of the hardware or operating system**; LV (Comments): *The right to install apps, app stores and set them as the default should also explicitly be included for device manufacturers and device suppliers 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 is on the gatekeeper to demonstrate that any measures restricting installation are necessary and*

	justified and that there are no less restrictive means to safeguard the integrity of the hardware or operating system.
(d) refrain from treating more favourably in ranking services and products offered by the gatekeeper itself ~~or by any third party belonging to the same undertaking~~ compared to similar services or products of third party and apply fair and non-discriminatory conditions to such ranking;	BE (Drafting): (d) refrain from treating more favourably in ranking services and products offered by the gatekeeper itself or any third party ~~or by any third party belonging to the same undertaking~~ compared to similar services or products of third parties~~y~~ and apply fair and non-discriminatory conditions to such ranking; BE (Comments): **BE** wonders if it is not desirable to also cover the preferential treatment of selected third parties. EE (Drafting): (d) refrain from treating more favourably in ranking services and products offered by the gatekeeper itself or by any third party ~~or by any third party belonging to the same undertaking~~ compared to similar services or products of third party and apply fair and non-discriminatory conditions to such ranking

	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 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 *not* constitute unfair and discriminatory ranking. For example, it should be explained that 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). Furthermore, the recitals should clarify that taking into account conditions such as environmental or humanitarian impact of a particular product in ranking should not be seen as discriminatory or unfair, if such conditions are applied homogeneously in regard of all similar products.
(e) refrain from technically restricting the ability of end users to switch between and subscribe to different software applications and services to be accessed using the operating system of the gatekeeper, including as regards the choice of Internet access service~~provider~~ for end users;	

(f) allow business users and providers of ancillary services access to and interoperability with the same operating system, hardware or software features that are available or used in the provision by the gatekeeper of any ancillary services. The gatekeeper shall not be prevented from taking necessary and proportionate measures to ensure that third party ancillary services do not endanger the integrity of the operating system, hardware or software features provided by the gatekeeper, provided that such proportionate measures are duly justified by the gatekeeper;	LT (Comments): LT supports the addition. We remain open to include similar clause to other provisions of Art 5-6 or as a general provision in the DMA. EE (Comments): EE supports the amendment proposed in the compromise text.
(g) provide advertisers and publishers, upon their request and free of charge, with access to the performance measuring tools of the gatekeeper and the information necessary for advertisers and publishers to carry out their own independent verification of the ad inventory, including aggregated data;	BE (Drafting): (g) provide advertisers and publishers, upon their request and free of charge, with access to the performance measuring tools of the gatekeeper, ~~and~~ the information necessary for advertisers and publishers to carry out their own independent verification of the ad inventory, including aggregated data, ~~;~~ and continious and real-time access via high-quality application programming interfaces to the data necessary for advertisers and publishers to run their own or third-party verification and measurement tools to measure the performance of the gatekeeper's intermediation services and the performance of an ad; BE (Comments): **BE** supports the proposal of amendment that was made by DE.

	SE (Drafting): provide advertisers and publishers, upon their request and free of charge, with access to the performance measuring tools of the gatekeeper and the information necessary for advertisers and publishers to carry out their own independent verification of the ad inventory, including aggregated data; SE (Comments): The allusion of the amendment may be looked over.
(h) provide end users, or third parties authorised by an end user, free of charge with effective portability of data generated through their activity ~~of a business user or end user~~in the context of the use of the relevant core platform services, and shall, in particular, provide free of charge tools ~~for end users~~ to facilitate the effective exercise of such data portability, in line with Regulation (EU) 2016/679, including by the provision of continuous and real-time access-;	BE (Comments): **BE** wonders if these tools must not also be provided for business users.
(i) provide business users, or third parties authorised by a business user, free of charge, with effective, high-quality, continuous and real-time access and use of aggregated or non-aggregated data, including personal data, that is provided for or generated in the context of the use of the relevant core platform services by those business users and the end users engaging with the products or services provided by those business users; for -personal data, provide access and use only where the data are directly connected with the use effectuated by the end user in respect of the products or services offered by the relevant business user through the relevant core platform service, and when the end user opts in to such	LU (Drafting): (i) provide business users, or third parties authorised by a business user, **upon their request,** free of charge, with effective, high-quality, continuous and real-time access and use of aggregated or non-aggregated data, including personal data, that is provided for or generated in the context of the use of the relevant core platform services by those business users and the end users engaging with the products or services provided

sharing with a consent in the sense of Article 6 of ~~the~~ Regulation (EU) 2016/679;;	by those business users; for -personal data, provide access and use only where the data are directly connected with the use effectuated by the end user in respect of the products or services offered by the relevant business user through the relevant core platform service, and when the end user opts in to such sharing with a consent in the sense of Article 6 of ~~the~~ Regulation (EU) 2016/679;; ES (Comments): It could be worth considering if portability of data for business users should be added in this obligation.
(j) provide to any third party providers of online search engines, upon their request, with access on fair, reasonable and non-discriminatory terms to ranking, query, click and view data in relation to free and paid search generated by end users on online search engines of the gatekeeper, subject to anonymisation for the query, click and view data that constitutes personal data. The relevant data is anonymized if personal data is irreversibly altered in such a way that information does not relate to an identified or identifiable natural person or personal data rendered anonymous in such a manner that the data subject is not or no longer identifiable;	LU (Drafting): (j) provide to any third party providers of online search engines, upon their request, with access on fair, reasonable and non-discriminatory terms to ranking, query, click and view data in relation to free and paid search generated by end users on online search engines of the gatekeeper, subject to anonymisation for the query, click and view data that constitutes personal data. ~~**The relevant data is anonymized if personal data is irreversibly altered in such a way that information does not relate to an identified or identifiable natural person or personal data rendered anonymous in such a manner that the data subject is not or no longer identifiable;**~~ LU (Comments): The DMA should not define "anonymisation" of personal data. The terms used here differ from recital 26 of the GDPR, and therefore indirectly

	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.
(k) 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.	
(l) refrain from making unsubscribing from a core platform service unnecessarily difficult or complicated for business users or end users.	LU (Drafting): ~~(l) refrain from making unsubscribing from a core platform service unnecessarily difficult or complicated for business users or end users.~~ LU (Comments): Which recital explains what “unnecessarily difficult” means? It may mean something different to different people and is therefore not a legally certain concept. 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.” LT (Comments): LT supports MSs, which ask for more clarity.
2. For the purposes of point (a) of paragraph 1 data that is not publicly available shall include any aggregated and non-aggregated data	

generated by business users that can be inferred from, or collected through, the commercial activities of business users or their customers on the core platform service of the gatekeeper.	
Article 7 Compliance with obligations for gatekeepers	LT (Comments): LT supports DK proposal. In addition, we would welcome any change that would make regulatory dialogue an effective instrument, allowing realistic explanation/technical specification of the requirements, established under Art 5-6. IE (Comments): For Article 7 to work effectively thereby encouraging maximum compliance – which has to be the goal of this provision - both 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 which preserve the Commission's discretion to specify but also recognise in certain circumstances regulatory dialogue will be necessary in order to achieve full compliance. Furthermore, we believe for some of the examples in the latest text on Article 10(1) to work, the sequencing of Article 7 proposed by Denmark is superior to that outlined in the Compromise Text. CZ (Comments):

<table>
<tr><td></td><td>CZ thinks that "regulatory dialogue" (par. 4) could be further strengthen and made more effective; for example, different business models of gatekeepers could be taken into acount.
EE
(Comments):
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.</td></tr>
<tr><td></td><td></td></tr>
<tr><td>1. The measures implemented by the gatekeeper to ensure compliance with the obligations laid down in Articles 5 and 6 shall be effective in achieving the objective of the relevant obligation. The gatekeeper shall ensure that these measures 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.</td><td>LU
(Drafting):
1. 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 objective of the relevant obligation and the objectives of this 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.
LU
(Comments):
As an alternative option to our proposal in the chapeau of Articles 5 and 6,</td></tr>
</table>

<table>
<tr><td></td><td>we propose to include a reference to the need for gatekeepers to consider cybersecurity concerns in Article 7(1). It is important that services remain secure and that users continue to benefit from a safe, functioning and beneficial service.</td></tr>
<tr><td></td><td></td></tr>
<tr><td>2. Where the Commission finds that the measures that the gatekeeper intends to implement pursuant to paragraph 1, or has implemented, do not ensure effective compliance with the relevant obligations laid down in Article 6, it may <u>open proceedings pursuant to Article 18 and</u> by decision <u>adopted in accordance with the advisory procedure referred to in Article 37a(2)</u> specify the measures that the gatekeeper concerned shall implement. The Commission shall adopt <s>such</s> a decision <u>pursuant to this paragraph</u> within six months from the opening of proceedings pursuant to Article 18.</td><td>LU

(Drafting):

2. Where the Commission finds that the measures that the gatekeeper intends to implement pursuant to paragraph 1, or has implemented, do not ensure effective compliance with the relevant obligations laid down in Article 6, it may <u>open proceedings pursuant to Article 18 and</u> by decision <u>adopted in accordance with the advisory procedure referred to in Article 37a(2)</u> specify the measures that the gatekeeper concerned shall implement. <u>The gatekeeper may provide a reasoned statement to explain why the measures it intends to implement or has implemented shall be necessary and effective in achieving the objectives of this Regulation pursuant to paragraph 1 and the relevant obligation.</u> The Commission shall adopt <s>such</s> a decision <u>pursuant to this paragraph</u> within six months from the opening of proceedings pursuant to Article 18.

LU

(Comments):

The gatekeeper shall be allowed to submit explanations as to why the measures to implement the obligations in Article 6 are effective. (this provision may also be placed in paragraph 4).

LT</td></tr>
</table>

	(Comments): LT: Art 7.2 indicates only a possibility to act ("it *may* open proceedings) in a case the Cion finds that "the measures that the gatekeeper intends to implement pursuant to paragraph 1, or has implemented, do not ensure effective compliance with the relevant obligations". LT supports flexible approach. However, from the legal certainty point of view, it would be advisable to clarify (in a text or in the recitals) this choice (e.g. why "shall" was not an option; timeframe during which the Cion could change its mind and decide to open the proceeding, etc.). In addition, we would welcome that a decision under Art 7.2 could also be reviewed, as it is done with a decision to designate a gatekeeper (Art 4).
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~~<u>gatekeeper</u> concerned should take in order to effectively address the preliminary findings. <u>Interested third parties shall be able to provide comments on these preliminary findings.</u>	LU (Drafting): 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~~<u>gatekeeper</u> concerned should take in order to effectively address the preliminary findings. <u>Interested third parties shall be able to provide comments on these preliminary findings.</u> <u>**The Commission shall take these comments into account when it adopts a decision pursuant to paragraph 2.**</u> LU

	(Comments): We support this addition but wonder in what way third parties can contribute. Will there be a public consultation? Within which timeframe? We would support a more developed consultation or dialogue, during which interested third parties can contribute to the way in which obligations are implemented by the gatekeeper. This would ensure the effectiveness of the obligations in practice. In any case, the Commission shall take such comments into account when taking a decision. LT (Comments): LT welcomes the amendment that interested third parties shall be involved in the regulatory dialogue. BE (Comments): CZ (Comments): CZ welcomes the introduction of involvement of third parties.
5. 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	LU (Drafting):

the gatekeeper and the relevant service.	5. In specifying the measures under paragraph 2, the Commission shall ensure that the measures are **<u>necessary for and</u>** effective in achieving the objectives of the relevant obligation and proportionate in the specific circumstances of the gatekeeper and the relevant service. LU (Comments): The measures always need to be checked against achieving the objectives of the obligations: they need not only be effective but also necessary to that end. 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** LT (Comments): LT suggests adding a general safeguard: "**The measures should take into account security, functionality and integrity of the services provided by the gatekeeper**."

6. 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 themselves confer an advantage on the gatekeeper which is disproportionate to the service provided by the gatekeeper to business users.	
7. 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 ~~may~~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.	LT (Comments): LT: it should be clear if a notification by the gatekeeper of the measures that the gatekeeper intends to implement or has implemented under Article 6 could lead (directly) to the sanctions. In another words, the text should state clearly an incentive for the companies to approach the Cion. ES (Comments): A recital should establish that gatekeepers might request the opening of proceedings pursuant to Article 18 from the moment the designation decision is published, to ensure legal certainty and applicability once obligations are applicable.
Article 8 Suspension	
1. The Commission may, acting on a reasoned request by the gatekeeper, exceptionally suspend, in whole or in part, a specific	IE

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~~37a(4~~2~~), where the gatekeeper demonstrates that compliance with that specific obligation would endanger, due to exceptional circumstances beyond the control of the gatekeeper, the economic viability of the operation of the gatekeeper in the Union, and only to the extent necessary to address such threat to its viability. The Commission shall aim to adopt the suspension decision without delay and at the latest 3 months following receipt of a complete reasoned request.	(Drafting): The Commission may, acting on a reasoned request by the 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~~37a(4~~2~~), where the gatekeeper demonstrates that compliance with that specific obligation would endanger, due to exceptional circumstances beyond the control of the gatekeeper, the economic viability of the operation of the gatekeeper in the Union, and only to the extent necessary to address such threat to its viability. 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 suspension decision shall be accompanied by a reasoned statement explaining the grounds for the suspension. IE (Comments): Statement is required on the grounds of transparency.
2. Where the suspension is granted pursuant to paragraph 1, the Commission shall review its suspension decision every year. Following such a review the Commission shall either wholly or partially lift the suspension or decide that the conditions of paragraph 1 continue to be met.	IE (Drafting): Where the suspension is granted pursuant to paragraph 1, the

	Commission shall review its suspension decision every year. Following such a review the Commission shall either wholly or partially lift the suspension or decide that the conditions of paragraph 1 continue to be met. When it intends to lift the suspension, the Commission shall beforehand invite the gatekeeper to present a revised reasoned request. IE (Comments): To ensure consistency with Article 8(1)
3. In cases of urgency, ~~T~~the Commission may, acting on a reasoned request by a gatekeeper, 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.	IE (Drafting): In cases of urgency, ~~T~~the Commission may, acting on a reasoned request by a gatekeeper, 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.
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 the Commission pursuant to paragraph 1.	IE (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 in particular gatekeeper's business users. 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

<table>
<tr><td></td><td>interests and the objectives of this Regulation. Such a request may be made and granted at any time pending the assessment of the Commission pursuant to paragraph 1.</td></tr>
<tr><td></td><td></td></tr>
<tr><td>Article 9
Exemption ~~for overriding reasons of public interest~~ on grounds of public morality, public health and public security</td><td>LU

(Drafting):

Article 9
Exemption ~~for overriding reasons of public interest~~ on grounds of ~~**public morality,**~~ public health and public security

LU

(Comments):

The CJEU caselaw defines what is to be understood as public interests. These can be quite wide-ranging but do not include public morality. What does this concept mean? This opens the door to political interpretations which would move away from objective considerations. We therefore propose to delete this.

ES

(Comments):

The previous reference to “overriding reasons of public interest”should be maintained. Besides, it would be better refering to “public policy” instead of “public morality” what would be consistent with some related regulation as the Ecommmerce Directive.</td></tr>
<tr><td></td><td></td></tr>
<tr><td>1. The Commission may, acting on a reasoned request by a gatekeeper or on its own initiative, by decision adopted in accordance</td><td></td></tr>
</table>

with the advisory procedure referred to in Article ~~32~~37a(4~~2~~), exempt it, in whole or in part, from a specific obligation laid down in Articles 5 and 6 in relation to an individual core platform service identified pursuant to Article 3(7), where such exemption is justified on the grounds set out in paragraph 2 of this Article. The Commission shall adopt the exemption decision at the latest 3 months after receiving a complete reasoned request.	
1a. Where an exemption is granted pursuant to paragraph 1, the Commission shall review its exemption decision every 2 years. Following such a review the Commission shall either wholly or partially lift the exemption or decide that the conditions of paragraph 1 continue to be met.	SE (Drafting): 1a. Where an exemption is granted pursuant to paragraph 1, the Commission shall review its exemption decision if the ground for the exemption no longer exists or at least every 2 years. Following such a review the Commission shall either wholly or partially lift the exemption or decide that the conditions of paragraph 1 continue to be met. SE (Comments): According to SE the exemption should not prevail longer than necessary.
2. An exemption pursuant to paragraph 1 may -only be granted on grounds of:	IE (Drafting): An exemption pursuant to paragraph 1 may -only be granted in order to ensure ~~on grounds of~~:
(a) public morality;	LU

	(Drafting): ~~**(a) public morality;**~~ LU (Comments): See above ES (Comments): It would be better refering to "public policy" instead of "public morality" what would be consistent with some related regulation as the Ecommmerce Directive.
(b) public health;	
(c) public security.	
	IE (Drafting): (d) data security (e) the protection of trade secrets (f) compliance with other relevant EU legislation

	IE (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, ~~T~~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.	
In assessing the request, the Commission shall take into account, in particular, the impact of the compliance with the specific obligation on the grounds in paragraph 2 as well as the effects on the gatekeeper concerned and 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 the goals pursued by the grounds in paragraph 2 and the objectives of this Regulation. Such a request may be made and granted at any time pending the assessment of the Commission pursuant to paragraph 1.	
Article 9a Reporting mechanism	LT (Comments): LT 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 are afraid that by the end of this legislative cycle the Cion 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

	used in full. As for the second level of the reporting mechanism: we would like to have more information on how the Cion expects the publicly available nonconfidential 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, e.g. on how data portability are to be conducted. This especially becomes relevant having in mind recital 58a, according to which **This publication should also enable stakeholders *to check* whether the gatekeeper at stake *fully* complies with the obligations laid down in Articles 5 and 6.**
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 and transparent manner the measures implemented to ensure compliance with the obligations laid down in Articles 5 and 6. This report shall be updated at least annually.	ES (Drafting): 1. Within six months after its designation pursuant to Article 3, and in application of Article 3(8), the gatekeeper **[shall provide** ~~provides~~] the Commission with a report describing in a detailed**, comprehensible** and transparent manner the measures implemented to ensure compliance with the obligations laid down in Articles 5 and 6. This report shall be updated at least annually. ES (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 just to improve the information to third parties. Provided that both aims would be relevant in term of an efficient implementation of the DMA, it would be strongly advisable to: a) Include a reference to this report in Article 7.1.

	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.
2. Within six months after its designation pursuant to Article 3, the gatekeeper shall publish and provide the Commission with a nonconfidential summary of the report referred to in paragraph 1 of this Article. The Commission shall publish without delay the nonconfidential summary of the report. This non-confidential summary shall be updated once the report referred to in paragraph 1 of this Article is updated.	BE (Drafting): 2. Within six months after its designation pursuant to Article 3, the gatekeeper shall publish and provide the Commission with a non-confidential summary of the report referred to in paragraph 1 of this Article. The Commission shall publish without delay the non-confidential summary of the report. This non-confidential summary shall be updated once the report referred to in paragraph 1 of this Article is updated. ES (Drafting): 2. Within six months after its designation pursuant to Article 3, the gatekeeper shall publish and provide the Commission with a **summary and a** nonconfidential ~~summary~~ **version** of the report referred to in paragraph 1 of this Article. **The summary shall understandably describe the implications of the adopted actions for the business and end users of the Core Platform Service.** The Commission shall publish without delay the **summary and the** nonconfidential ~~summary~~ **version** of the report. **This information shall be** ~~non-confidential summary shall be~~

	updated once the report referred to in paragraph 1 of this Article is updated.
Article 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 that essential elements of the DMA can be modified via such delegated acts. For example new obligations cannot be added by way of delegated acts. This can only happen via the ordinary legislative procedure, based on the necessary preparatory work such as impact assessments and market evidence. LT (Comments): LT is still scrutinizing the amendments made to Art 10 (including the latest proposal by the PRES) as they still leave too much room to change the scope of the DMA without proper legislative process. The most concerning aspects: possibility to add new practices (as mentioned by SK) or modify existing practices in a way that could change the essence of it (having in mind that the wordings as such "the *extension* of an obligation", "adding *further* conditions", are used). Therefore, LT reserves the right to provide more comments and suggestions, especially regarding Art 10 a-g, at the later stage. CZ (Comments):

	CZ understands that delegated acts shall only specify the obligations and not change the text of DMA EE (Comments): EE is supportive of the direction of compromise text as regards to Article 10, which establishes a clearly defined limited framework for updating obligations of gatekeepers via delegated acts.
1. The Commission is empowered to adopt delegated acts in accordance with Article 374 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 the need to update those~~for new~~ obligations to address~~ing~~ practices 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.	LT (Comments): LT subscribes to FI concern regarding the used terminology. As a compromise, an explanation, provided by the CLS, could be reflected in the recitals to avoid any misunderstandings. LT supports SE and IE proposals. IE (Drafting): The Commission is empowered to adopt delegated acts in accordance with Article 374 to ~~update~~supplement or amend the obligations laid down in Articles 5 and 6 where, ~~based~~ on the basis of the findings of a market investigation pursuant to Article 17, it has identified: • the need to update those~~for new~~ obligations to address~~ing~~ practices that limit the contestability of core platform services;~~, or~~ • 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~~.~~

	• that one or more of those obligations are no longer warranted or need to be narrowed, IE (Comments): The link between Articles 10 and 17 needs to be strengthened to say the delegated act will be based on the findings of an Article 17 investigation. In order to fully future proof the Delegated Act process the Commission should have the possibility to withdraw or narrow obligations listed in Articles 5 and 6 if in light of relevant market developments it considers that those obligations are no longer warranted. SE (Drafting): The Commission is empowered to adopt delegated acts in accordance with Article 37.4 to ~~update~~supplement, ~~or~~ amend or remove 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 the need to update those~~for new~~ obligations to address~~ing~~ practices 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 or no longer limit the contestability of core platform services. SE (Comments):

	According to SE obligations should be able to be removed by delegated acts. ES (Drafting): 1. The Commission is empowered to adopt delegated acts in accordance with Article 374 to ~~updatesupplement or~~ **amend, within the original purpose and substance,** the **existing** obligations laid down in Articles 5 and 6. **This amendment shall be based on** ~~the basis of~~ a market investigation pursuant to Article 17, ~~it~~ **that** has identified the need to ~~update~~ **redefine** those~~for new~~ obligations to address~~ing~~ practices 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. **These amendments shall apply to all designated gatekeepers.** ES (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 Services in previous meetings-. The new wording allows introducing a future proof clause, providing the possibility for the Commission to redefine the way to implement the obligations, 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:	ES (Drafting): A delegated act which ~~supplements~~ **amends** the obligations in accordance with the first subparagraph shall **[respect the purpose/aim of the existing obligations and]** be limited to:
(a) the extension of an obligation that applies only to certain core platform services, to other core platform services listed in Article 2 point (2);	ES (Drafting): (a) 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**; ES (Comments): If it is possible to extend an obligation that applies only to certain core platform services, to other 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 (and consequently, those cases were there is not factual evidence on the market disruption/possible impact). **If there is any doubt on the legal compatibility of the proposed amendment, an explanation of the CLS would be appreciated.

(b) the extension of an obligation where it identifies a subset of business users or end users as beneficiaries, to other subsets of business users or end users as beneficiaries; and	ES (Drafting): (b) the extension of an obligation where it identifies a subset of business users or end users as beneficiaries, to other subsets of business users or end users as beneficiaries **or the restriction of the subset of business users or end users identified as beneficiaries**; and ES (Comments): If it is possible to extend an obligation that applies only to certain users to other, it should be also possible to act on the opposite direction. **If there is any doubt on the legal compatibility of the proposed amendment, an explanation of the CLS would be appreciated.
(c) the specification of the manner in which the obligations of gatekeepers under Articles 5 and 6 are to be performed with a view to improving the effectiveness of the application of those obligations and preventing their circumvention;	
[(d) …]	ES (Drafting): **(d) to extend for some obligations the possibility of the gatekeeper to take proportionate measures to ensure that the integrity of the hardware or operating system provided by the gatekeeper is not endangered;**

A delegated act which amends the obligations in accordance with the first subparagraph shall be limited to the amendment of […]	ES (Drafting): 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.***
2. A practice as referred to in paragraph 1 shall be considered to be unfair or to limit the contestability of core platform services where:	LV (Drafting): 2. A practice within the meaning of paragraph 1 shall be considered to be unfair or limit the contestability of core platform services where: (a) there is an imbalance of rights and obligations on business users **or end users** and 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**; or (b) the contestability of markets is weakened as a consequence of such a practice engaged in by gatekeepers. LV (Comments): *A practice can be unfair or limit the contestability of core platform services where there is an imbalance between the rights and obligations of end users and gatekeepers as well as business users and gatekeepers. 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.*

(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~~it is 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 (Comments): CZ would like to clarify the meaning of the term "key input"; what exactly does it mean and does it include inputs from other markets as well? Maybe it should be specified in guidelines/other soft law? SE (Comments): 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.	LV (Drafting): 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, 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**, <u>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</u>.** 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	LV

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**, <u>including 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</u>**. 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.*
Article 12 Obligation to inform about concentrations	LT (Comments): LT. As a general remark, we could support compromise text as it is and would not support further changes/expansion of the provision, including which would go against the legal ground of the DMA CZ

	(Comments): CZ support 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.
1. A gatekeeper shall inform the Commission of any intended concentration within the meaning of Article 3 of Regulation (EC) No 139/2004 involving another gatekeeper, provider of core platform services or of any other services provided in the digital sector irrespective of whether it is notifiable to a Union competition authority under Regulation (EC) No 139/2004 or to a competent national competition authority under national merger rules.	FI (Comments): Finland considers that removing the words “involving another provider of core platform services or of any other services provided in the digital sector” as 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 (Comments): EE supports remaining close to the original Commission proposal as regards to Article 12 and would not support any further expansion of this clause.
A gatekeeper shall inform the Commission of such a concentration at least two months prior to its implementation and following the conclusion of the agreement, the announcement of the public bid, or the acquisition of a controlling interest.	EE (Drafting): A gatekeeper shall inform the Commission of such a concentration ~~at least two months~~ prior to its implementation and following the conclusion of

<table>
<tr><td></td><td>the agreement, the announcement of the public bid, or the acquisition of a controlling interest.

EE

(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 start-ups from exiting the market and creating an unreasonable barrier for concluding such concentrations.

The notification deadline is disproportionate since the notification is purely of an informative nature. There is no possibility to stop the concentration under this Regulation. If there is an obligation for merger control, then this must be carried out on a separate basis.</td></tr>
<tr><td></td><td></td></tr>
<tr><td>2. 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 transaction value or an estimation thereof, a summary of the concentration, including its nature and rationale, as well as a list of the Member States concerned by the operation.</td><td>LU

(Drafting):

2. 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 transaction value or an estimation thereof, a summary of the concentration, including its nature and rationale, as well as a list of the Member States concerned by the operation.

LU</td></tr>
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	(Comments): The field of activity has to be the digital sector, given the scope of the DMA. 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 which, among else, also has a significant impact on the start-ups and other SMEs. The purpose of the original items in the draft proposal was to determine, whether the gatekeeper has expanded its core platform services. The purpose of the additional items of information included in the compromise text is not clear and could therefore be disproportionate. Therefore, we would not be opposed to deleting them. SE (Drafting): The notification pursuant to paragraph 1 shall at least describe for the acquisition targets and ~~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 transaction value or an estimation thereof, a summary of the concentration, including its nature and rationale, as well as a list of the Member States concerned by the operation.

	SE (Comments): According to SE the acquisition targets should remain in the proposal. SE considers that the activity that will be interesting for the Commission or the national competition authorities is within this company. The Merger Regulation generally uses the term "undertaking concerned", which refers to buyers and target companies (the acquired company) while the parties consist of buyers and sellers. If the concept of "acquisition targets" is considered unclear, SE would suggest the use of this concept.
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.	EE (Drafting): 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~~. EE (Comments): The rationale of the concentration is required twice.
3. If, following any concentration as provided in paragraph 1,	

additional core platform services individually satisfy the thresholds in point (b) of Article 3(2), the gatekeeper concerned shall inform the Commission thereof within three months from the implementation of the concentration and provide the Commission with the information referred to in Article 3(2).	
4. 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~~end users that the gatekeeper applies to or across its core platform services identified pursuant to Article 3.	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*

	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).
The gatekeeper makes publicly available an overview of the audited description taking into account the limitations imposed by the requirements of business secrecy. Theis description and its publicly available overview shall be updated at least annually.	IE (Drafting): The gatekeeper makes publicly available an overview of the audited description taking into account the limitations imposed by the requirements of business secrecy. Theis description and its publicly available overview shall be updated at least annually.
Chapter IV	
Market investigation	
Article 14 Opening of a 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;	

(b) the description of the issue to which the investigation relates to;	
(c) the purpose of the investigation.	
3. The Commission may reopen a market investigation that it has closed where:	
(a) there has been a material change in any of the facts on which the decision was based;	
(b) the decision was based on incomplete, incorrect or misleading information ~~provided by the undertakings concerned~~.	
Article 15 Market investigation for designating gatekeepers	
1. The Commission may conduct a market investigation for the purpose of examining whether a<ins>n</ins> ~~provider of core platform services~~<ins>undertaking</ins> 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<ins> in accordance with the advisory procedure referred to in Article 37a(2)</ins>.	LU (Drafting): 1. The Commission may conduct a market investigation for the purpose of examining whether a<ins>n</ins> ~~provider of core platform services~~<ins>undertaking</ins> 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<ins> in accordance with the advisory procedure referred to in Article 37a(2)</ins>.

	LU (Comments): The obligations on the Commission shall be as legally clear as possible. It is not clear why obligations regarding process shall ne be as clear or firm on the Commission. Once the Commission conducts a market investigation, its obligations shall be honoured and not merely “aimed at” or “endeavoured to”. Good intentions are commendable but do not provide for legally certain outcomes. LT (Comments): LT: question for the clarification. How a review process under Art 4 correlates with market investigation under Art 15 insofar an examination of CPSs is concerned. In other words, it would be useful to make a link between these articles (if there is one), because now only in a case of “future gatekeepers” there is a reference to Art 4 (see Art 15.4). CZ (Comments): CZ welcomes that the investigation shall be concluded by a form of a decision, which enhances legal certainty of gatekeepers.
2. 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~~undertaking concerned within six months from the opening of the investigation. In the preliminary findings, the Commission shall explain whether it considers, on a provisional basis, that the ~~provider of core platform services~~undertaking should be designated as a gatekeeper pursuant to Article 3(6).	LU (Drafting): 2. In the course of a market investigation pursuant to paragraph 1, the Commission shall **~~endeavour to~~** communicate its preliminary findings to

<table>
<tr><td></td><td>the ~~provider of core platform services~~<u>undertaking</u> concerned within six months from the opening of the investigation. In the preliminary findings, the Commission shall explain whether it considers, on a provisional basis, that the ~~provider of core platform services~~<u>undertaking</u> 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 under Art 15 could be done, is missing – "or in order to identify core platform services for a gatekeeper pursuant to Article 3(7)". That is to say, the preliminary findings by the Cion should also cover information about CPSs.

IE

(Drafting):

2. 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~~<u>undertaking</u> concerned ~~within~~<u>as soon as possible and no later than</u> six months from the opening of the investigation. In the preliminary findings, the Commission shall explain whether it considers, on a provisional basis, that the ~~provider of core platform services~~<u>undertaking</u> should be designated as a gatekeeper pursuant to Article 3(6).</td></tr>
<tr><td></td><td></td></tr>
<tr><td>3. Where the ~~provider of core platform services~~<u>undertaking</u> satisfies the thresholds set out in Article 3(2), but has presented ~~significantly~~<u>sufficiently</u> substantiated arguments in accordance with Article 3(4), the Commission shall endeavour to conclude the market investigation within five months from the opening of the market investigation by a decision pursuant to paragraph 1. In that case the</td><td>LU

(Drafting):

3. Where the ~~provider of core platform services~~<u>undertaking</u> satisfies the thresholds set out in Article 3(2), but has presented</td></tr>
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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.	~~significantly~~sufficiently substantiated arguments in accordance with Article 3(4), the Commission shall ~~**endeavour to**~~ conclude the market investigation within five months from the opening of the market investigation by a decision pursuant to paragraph 1. In that case the 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. IE (Drafting): Where the ~~provider of core platform services~~undertaking satisfies the thresholds set out in Article 3(2), but has presented ~~significantly~~sufficiently substantiated arguments in accordance with Article 3(4), the Commission shall endeavour to conclude the market investigation ~~within~~as soon as possible and no later than five months from the opening of the market investigation by a decision pursuant to paragraph 1. In that case the 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.
4. When the Commission pursuant to Article 3(6) designates as a gatekeeper an ~~provider of core platform services~~undertaking that does not yet enjoy an 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 that the gatekeeper concerned achieves by unfair means an entrenched and durable position in its operations. The Commission shall review such a	LT (Comments): LT could support DE remark about more proper placement of this para. In addition, we suggest making a wording "*it shall declare*" more specific – in which process such declaration will occur? How it relates to a administrative decision to designate a gatekeeper? How it relates to an article in question: does the designation of the "future gatekeepers" come

designation in accordance with the procedure laid down in Article 4.	as an *ancillary* result after the market investigation conducted to examine whether undertaking should be designated as a gatekeeper pursuant to Article 3(6) (Art 15.1), or can it be the primal goal? As to the last sentence "*The Commission shall review such a designation in accordance with the procedure laid down in Article 4*": from the legal point of view, Art 4.1 already states that all decisions adopted pursuant to Art 3, may be reviewed. Art 15.4 gives a reference to Art 3.6, which means that formally Art 4 already covers a designation of "future gatekeepers". However, if there is a need to make a specific reference, we suggest a redrafting; one of the possibilities would be to give a reference to Art 15.4 (or other article, which will cover the decision of the "future gatekeepers") in the Art 4.1; this suggestion reflects recital 30, according to which both decisions (to grant a status of a gatekeeper and to grant a status of a "future gatekeeper") can be reviewed every 2 year. IE (Drafting): When the Commission pursuant to Article 3(6) designates as a gatekeeper an ~~provider of core platform services~~undertaking that does not yet enjoy an entrenched and durable position in its operations, but, after giving the provider the possibility to express its views, ~~-~~it is foreseeable that it will enjoy such a position in IE (Comments): For a holistic assessment to take place, the provider should be in a position to express their views during the investigation.

Article 16 Market investigation into systematic non-compliance	LT (Comments): LT welcomes that both conditions to delcare systematic non-compliance are left in the text.
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 orand 6 and has 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 3237a(42) impose on such gatekeeper any behavioural or 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 paragraph 1 either where there is no equally effective behavioural remedy or where any equally effective behavioural remedy would be more burdensome for the gatekeeper concerned than the structural remedy.	
3. A gatekeeper shall be deemed to have engaged in a systematic non-compliance with the obligations laid down in Articles 5 and 6, where the Commission has issued at least three non-compliance or fining decisions pursuant to Articles 25 and 26 respectively against a gatekeeper in relation to any of its core platform services within a period of five years prior to the adoption of the decision opening a market investigation in	

view of the possible adoption of a decision pursuant to this Article.	
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 to reach end 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.	IE (Drafting): The Commission shall communicate its objections to the gatekeeper concerned ~~within~~ as soon as possible and not later than 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 where the extension is justified on objective grounds and proportionate. The extension may apply to the deadline by which the Commission has to issue its objections, or to the deadline for adoption of the final decision. The total duration of any extension or 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.	
Article 17 Market investigation into new services and new practices	LU

	(Comments): 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 the list of core platform services or to detect types of practices that ~~may~~ limit the contestability of core platform services or ~~may be~~are unfair and which are not effectively addressed by this Regulation. It shall issue a public report at the latest within 24 months from the opening of the market investigation.	IE (Drafting): … that ~~may~~ limit the contestability of core platform services or ~~may be~~are unfair and which are not effectively addressed by this Regulation. It shall issue a public report at the latest within 12~~24~~ months from the opening of the market investigation. CZ (Drafting): 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 ~~may be~~are unfair and which are not effectively addressed by this Regulation. It shall issue a public report at the latest within 24 months from the opening of the market investigation. CZ (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

	removed from the list of core platform services, if a market investigation shows their redudancy.
Where appropriate, that report shall:	
(a) be accompanied by a proposal to amend this Regulation in order to include additional services within the digital sector in the list of core platform services laid down in point 2 of Article 2;	LU (Drafting): (a) be accompanied by a proposal to amend this Regulation in order to 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 new obligations in Article 5 or 6**; **or** <u>**to remove existing obligations in Article 5 or 6 ; or**</u> LU (Comments): 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. LT (Comments): LT supports FI proposal to include "**or remove obligations from them**". ES (Drafting): (a) be accompanied by a proposal to amend this Regulation in order to

	~~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 to 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 (Comments): 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.
(b) be accompanied by a delegated act amending Articles 5 or 6 as provided for in Article 10.	
	LT (Comments): LT supports the Cion' position that information gathered throughout the process of the market investigation, should not be disclosed to research institutions.
Chapter V	
	LT (Comments): 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. However, LT stresses that the Cion should remain

	the only enforcer of the DMA, as an alternative process could undermine the single market approach.
Investigative, enforcement and monitoring powers	
Article 18 Opening of proceedings	
Where the Commission intends to carry out proceedings in view of the possible adoption of decisions pursuant to Article~~s~~ 7, 25 and 26, it shall adopt a decision opening a proceeding.	
Article 19 Requests for information	
1. In order to carry out the duties assigned to it by this Regulation, ~~T~~the Commission may by simple request or by decision require information from undertakings and associations of undertakings to provide all necessary information, including for the purpose of monitoring, implementing and enforcing the rules laid down in this Regulation. 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.	LU (Drafting): 1. In order to carry out the duties assigned to it by this Regulation, ~~T~~the Commission may by simple request or by decision require information from undertakings and associations of undertakings to provide all necessary information, ~~**including**~~ for the purpose of monitoring, implementing and enforcing the rules laid down in this Regulation. 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. LU (Comments): The request for information shall be strictly for the purposes of

	monitoring, implementing and enforcing the DMA. Any fishing expeditions should be avoided. While Regulation 1/2003 is usually applied in case-by-case situations, the DMA establishes generally applicable rules which need to be limited to what is necessary and proportionate across the board. This is why we propose to delete the term "including". LT (Comments): LT supports FI proposal to eliminate a word "including". FI (Comments): (Drafting): 1. **In order to carry out the duties assigned to it by this Regulation,** ~~T~~the Commission may by simple request or by decision require information from undertakings and associations of undertakings to provide all necessary information~~, including~~ for the purpose of monitoring, implementing and enforcing the rules laid down in this Regulation. 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. (Comments): FI considers that the word "including" should be deleted to specify which information should be provided. Otherwise this provision is open ended. Enabling the Commission to request all necessary information for the purpose of monitoring, implementing and enforcing the rules laid down in this Regulation would cover all information that the Commission might need.

2. The Commission may request information from undertakings and associations of undertakings pursuant to paragraph 1 also prior to opening a market investigation pursuant to Article 14 or proceedings pursuant to Article 18.	
3. When sending a simple request for information to an undertaking or association of undertakings, the Commission shall state the the legal basis and purpose of the request, specify what information is required and fix the time-limit within which the information is to be provided, and the penalties provided for in Article 26 for supplying incomplete, incorrect or misleading information or explanations.	CZ (Comments): CZ thinks that stating the legal basis of a request for information should be taken for granted in any case.
4. Where the Commission requires undertakings and associations of undertakings to supply information by decision, it shall state the legal basis and the purpose of the request, specify what information is required and fix the time-limit within which it is to be provided. Where the Commission requires undertakings to provide access to its data-bases and algorithms, it shall state the legal basis and the purpose of the request, and fix the time-limit within which it is to be provided. It shall also indicate the penalties provided for in Article 26 and indicate or impose the periodic penalty payments provided for in Article 27. It shall further indicate the right to have the decision reviewed by the Court of Justice.	CZ (Comments): CZ thinks that stating the legal basis of a request for information should be taken for granted in any case.
5. The undertakings or associations of undertakings or their representatives and, in the case of legal persons, companies or firms, or associations having no legal personality, the persons authorised to represent them by law or by their constitution, shall supply the information requested on behalf of the undertaking or the association of undertakings concerned. Lawyers duly authorised to act may supply the	

information on behalf of their clients. The latter shall remain fully responsible if the information supplied is incomplete, incorrect or misleading.	
5a 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 busines of the undertaking or association of undertakings is situated.	LU (Drafting): 5a 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 busines~~ **main establishment** of the undertaking or association of undertakings is situated. LU (Comments): "Principal place of business" is not a used term in EU law. LT (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"). BE (Drafting): 5a The Commission shall without delay forward a copy of the simple request or of the decision requesting information to the competent authorities~~y~~ of the Member State in whose territory the principal place of

	busines of the undertaking or association of undertakings is situated.
6. At the request of the Commission, the ~~governments and~~competent authorities of the Member States shall provide the Commission with all necessary information in their possession to carry out the duties assigned to it by this Regulation.	LT (Comments): LT supports the proposed changes.
Article 20 Power to carry out interviews and take statements	
In order to carry out the duties assigned to it by this Regulation, ~~T~~the Commission may interview any natural or legal person which consents to being interviewed for the purpose of collecting information, relating to the subject-matter of an investigation, including in relation to the monitoring, implementing and enforcing of the rules laid down in this Regulation.	
Article 21 Powers to conduct on-site inspections	
1. In order to carry out the duties assigned to it by this Regulation, ~~T~~the Commission may conduct on-site inspections at the premises of an undertaking or association of undertakings.	
2. On-site inspections may also be carried out with the assistance of auditors or experts appointed by the Commission pursuant to Article 24(2) as well as the competent authority of the Member State in whose territory the inspection is to be conducted.	BE (Drafting): 2. On-site inspections may also be carried out with the assistance of auditors or experts appointed by the Commission pursuant to Article 24(2)

	as well as officials of as well as those authorised by the competent authoritiesy of the Member State in whose territory the inspection is to be conducted. BE (Comments): **BE** is in favour of the terminology used in Regulation 1/2003 and proposes thus this small modification. SE (Drafting): On-site inspections may also be carried out with the assistance of auditors or experts appointed by the Commission pursuant to Article 24(2) or with assistance of officials of as well as those authorised or appointed by as well as the competent authority of the Member State in whose territory the inspection is to be conducted. SE (Comments): A clarification suggested from SE.
3. During on-site inspections the Commission, and auditors or experts appointed by it as well as the competent authority of the Member State in whose territory the inspection is to be conducted may require the undertaking or association of undertakings to provide access to 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 the competent authority of the Member State in whose territory the inspection is to be conducted may address questions to key personnelany representative or member of staff.	BE (Drafting): 3. During on-site inspections the Commission, and auditors or experts appointed by it as well as officials of as well as those authorised by the competent authoritiesy of the Member State in whose territory the inspection is to be conducted may require the undertaking or association

	of undertakings to provide access to 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 of as well as those authorised by the competent authoritiesy of the Member State in whose territory the inspection is to be conducted may address questions to ~~key personnel~~any representative or member of staff. BE (Comments): **BE** is in favour of the terminology used in Regulation 1/2003 and proposes thus this small modification. SE (Drafting): 3. During on-site inspections 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 undertaking or association of undertakings to provide access to 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 address questions to ~~key personnel~~any representative or member of staff. SE (Comments): A clarification in line with Article 20 in Regulation 1/2003.

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 Articles 26 and 27 and the right to have the decision reviewed by the Court of Justice of the European Union.	
	IE (Drafting): **5. Where the officials and other accompanying persons authorised by the Commission find that an undertaking opposes an inspection ordered pursuant to this Article, the Member State concerned shall afford them 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.** **6. If the assistance provided for in paragraph 5 requires authorisation from a judicial authority according to national rules, such authorisation shall be applied for. Such authorisation may also be applied for as a precautionary measure.** **7. Where authorisation 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**

	competent authority, for detailed explanations in particular on the grounds the Commission has for suspecting infringement of this Regulation, as well as on the seriousness of the suspected infringement and on the nature of the involvement of the undertaking concerned. However, the national judicial authority may not call into question the necessity for the inspection nor demand that it be provided with the information in the Commission's file. The lawfulness of the Commission decision shall be subject to review only by the Court of Justice. IE (Comments): Article 21 re powers to conduct on-site inspections should be revised to allow for appropriate authorisation to be sought (such as by way of a warrant) so that the national competent authorities can be sure of the legality of assisting with such inspections.
Article 22 Interim measures	
1. In case of urgency due to the risk of serious and irreparable damage for business users or end users of gatekeepers, the Commission may, by decision adopted in accordance with the advisory procedure referred to in Article ~~32~~37a(4~~2~~), order interim measures against a gatekeeper on the basis of a prima facie finding of an infringement of Articles 5 or 6.	
2. A decision pursuant to paragraph 1 may only be adopted in the context of proceedings opened in view of the possible adoption of a decision of non-compliance pursuant to Article 25(1). This decision shall apply for a specified period of time and may be renewed in so far this is	

necessary and appropriate.	
Article 23 Commitments	
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~~37a(~~4~~2) 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) there has been a material change in any of the facts on which the decision was based;	
(b) the gatekeeper concerned acts contrary to its commitments;	
(c) the decision was based on incomplete, incorrect or misleading information provided by the parties.	
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 of the Member States, to assist the Commission to monitor the obligations and measures and to provide specific expertise or knowledge to the Commission.	LU (Drafting): 2. The actions pursuant to paragraph 1 may include the appointment of independent external experts and auditors, ~~**including**~~ ~~**from**~~ **as well as** competent authorities of the Member States, to assist the Commission to monitor the obligations and measures and to provide specific expertise or knowledge to the Commission. LU (Comments): Independent external experts cannot come, by definition, from competent authorities.
Article 25 Non-compliance	
1. The Commission shall adopt a non-compliance decision in accordance with the advisory procedure referred to in Article ~~32~~37a(4~~2~~) where it finds that a gatekeeper does not comply with one or more of the following:	

(a) any of the obligations laid down in Articles 5 or 6;	
(b) measures specified in a decision adopted pursuant to Article 7(2);	
(c) measures ordered pursuant to Article 16(1);	
(d) interim measures ordered pursuant to Article 22; or	
(e) commitments made legally binding pursuant to Article 23.	
2. Before adopting the decision pursuant to paragraph 1, the Commission shall communicate its preliminary findings to the gatekeeper concerned. 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.	
3. In the non-compliance decision adopted pursuant to paragraph 1, 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.	
4. The gatekeeper shall provide the Commission with the description of the measures it took to ensure compliance with the <u>non-compliance</u> decision adopted pursuant to paragraph 1.	
5. Where the Commission finds that the conditions of paragraph 1 are	

not met, it shall close the investigation by a decision.	
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 in the preceding financial year where it finds that the gatekeeper, intentionally or negligently, fails to comply with:	CZ (Comments): CZ welcomes the clarification, that the turnover shall be defined as the worldwide; we think that this approach takes more account of the power of individual gatekeepers.
(a) any of the obligations pursuant to Articles 5 and 6;	
(b) the measures specified by the Commission pursuant to a decision under Article 7(2);	
(c) measures ordered pursuant to Article 16(1);	
(d) a decision ordering interim measures pursuant to Article 22;	
(e) 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 their total turnover in the preceding financial year where they intentionally or negligently:	SE (Drafting):

	The Commission may by decision impose on undertakings and associations of undertakings fines not exceeding 1% of their total <u>worldwide </u> turnover in the preceding financial year where they intentionally or negligently SE (Comments): Adjustment corresponding to p. 1.
<u>(aa) fail to comply with the obligation to notify the Commission according to Article 3(3);</u>	ES (Comments): This amendment is highly relevant to maintain the incentives to notify, provided the new specifications in the designation procedure of Article 3.4.
(a) 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;	
(b) fail to notify information ~~that is required pursuant to Article 12~~ or supply incorrect, incomplete or misleading information <u>that is required pursuant to Article 12</u>;	
(c) fail to submit the description <u>or supply incorrect, incomplete or misleading information</u> that is required pursuant to Article 13;	
(d) <u>fail to supply or</u> supply incorrect, incomplete or misleading	

information or explanations that are requested pursuant to Articles 19 or Article 20;	
(e) fail to provide access to data-bases and algorithms pursuant to Article 19;	
(f) 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 relating to the subject-matter and purpose of an inspection, pursuant to Article 21;	
(g) refuse to submit to an on-site inspection pursuant to Article 21.	
3. In fixing the amount of the fine, regard shall be had to the gravity, duration, recurrence, and, for fines imposed pursuant to paragraph 2, delay caused to the proceedings.	
4. When a fine is imposed on an association of undertakings taking account of the turnover of its members and the association is not solvent, the association shall be obliged to call for contributions from its members to cover the amount of the fine.	
Where such contributions have not been made to the association of undertakings within a time-limit set by the Commission, the Commission may require payment of the fine directly by any of the undertakings whose representatives were members of the decision-making bodies concerned of the association.	
After having required payment in accordance with the second	

subparagraph, the Commission may require payment of the balance by any of the members of the association of undertakings~~which were active on the market on which the infringement occurred~~, where necessary to ensure full payment of the fine.	
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 ~~started investigating the case~~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 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);	
(b) to supply correct and complete information within the time limit required by a request for information made by decision pursuant to Article 19;	

(c) 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;	
(d) to submit to an on-site inspection which was ordered by a decision taken pursuant to Article 21;	
(e) to comply with a decision ordering interim measures taken pursuant to Article 22(1);	
(f) to comply with commitments made legally binding by a decision pursuant to Article 23(1);	
(g) to comply with a decision pursuant to Article 25(1).	
2. Where the undertakings have satisfied the obligation which the periodic penalty payment was intended to enforce, the Commission may by decision adopted in accordance with the advisory procedure referred to in Article ~~32~~37a(4~~2~~) set the definitive amount of the periodic penalty payment at a figure lower than that which would arise under the original decision.	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.

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 ~~an~~ 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:	
(a) requests for information by the Commission;	
(b) ~~on-site inspection~~written authorisations to conduct inspections issued to its officials by the Commission ;	LU (Drafting): (b) ~~on-site inspection~~**~~written authorisations to conduct inspections issued to its officials by the Commission ;~~** LU

	(Comments): Article 21 does not refer to any written authorisations, and we would be reluctant to make such on-site inspections unnecessarily formalistic.
(c) the opening of a proceeding by the Commission pursuant to Article 18.	
4. Each interruption shall start time running afresh. However, the limitation period 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. That period shall be extended by the time during which limitation is suspended pursuant to paragraph 5.	
5. The limitation period for the imposition of fines or periodic penalty payments 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.	
Article 29 Limitation periods for the enforcement of penalties	
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.	
3. The limitation period for the enforcement of penalties shall be	

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 (Drafting): (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.~~** ES

	(Comments): As said in coments about *private enforcement (art. 33a) i*f this sentence is to be added, it should prevent the conflict between resolutions of different national courts and guarantee the consistency of the enforcement.
Article 30 Right to be heard and access to the file	
1. Before adopting a decision pursuant to Article 7, Article 8(1), Article 9(1), Articles 15, 16, 22, 23, 25 and 26 and Article 27(2), the Commission shall give the gatekeeper or undertaking or association of undertakings concerned the opportunity of being heard on:	
(a) preliminary findings of the Commission, including any matter to which the Commission has taken objections;	
(b) measures that the Commission may intend to take in view of the preliminary findings pursuant to point (a) of this paragraph.	
	LV (Drafting): **1a. If the Commission considers it necessary, it may also hear other natural or legal persons before taking the decisions as provided for in paragraph 1. Applications to be heard on the part of such persons shall, where they show a sufficient interest, be granted. The Member State authorities designated under Article 21a may also ask the Commission to hear other natural or legal persons with sufficient interest.**

	LV (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.*
2. Gatekeepers, undertakings and associations of undertakings concerned may submit their observations to the Commission's preliminary findings within a time limit which shall be fixed by the Commission in its 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 have been able to comment.	LV (Drafting): 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. LV (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.*

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 concerned 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 to the file 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.	SE (Drafting): 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 concerned 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 to the Commission´s file 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.
	LV (Drafting): **5. Natural or legal persons who can show a legitimate interest shall be entitled to lodge complaints with regard to the non-designation of gatekeepers and non-compliance and systematic non-compliance by gatekeepers with their obligations under this Regulation.** LV (Comments): *Third parties should be entitled to lodge formal complaints about gatekeepers' non-compliance with their obligations under this Regulation. The suggested amendment mirrors third party rights under Regulation*

	1/2003 (Article 7) in antitrust enforcement.
Article 31 Professional secrecy	
1. The information collected pursuant to Articles 3, ~~12,~~ 13, 19, 20 and 21 shall be used only for the purposes of this Regulation.	
<u>1a. The information collected pursuant to Article 12 shall be used only for the purposes of this Regulation and Regulation (EC) No. 139/2004.</u>	BE (Drafting): ~~1a. 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): **BE:** Is there still a need for the new article 31.1a taken into account that paragraph 4 of article 32a now indicates that the information exchanged pusuant to paragraph 3 can be exchanged for the enforcement of the rules refered to in article 1(6). This article 1 (6) refers to the Merger Regulation as well. FI (Comments): FI highlights the fact that the proposal for using the information collected pursuant to Article 12 for the purposes of Regulation (EC) No. 139/2004 (legal basis of which are Articles 103 and 352 TFEU) will significantly widen the use of information collected according the DMA, which in turn

	has Article 114 TFEU as its legal basis.
2. Without prejudice to the exchange and to the use of information provided for the purpose of use pursuant to Articles ~~32~~ 37a and 33, 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 participating in any of the activities of the Digital Markets Advisory Committee pursuant to Article ~~32~~37a.	
~~Article 32~~ ~~Digital Markets Advisory Committee procedure~~	
~~1. The Commission shall be assisted by a committee ('the Digital Markets Advisory Committee'). That Ccommittee shall be a Ccommittee within the meaning of Regulation (EU) No 182/2011.~~	
~~2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.~~	
~~Where the opinion of the committee is to be obtained by written procedure, that procedure shall be terminated 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 Ccommittee to the addressee of an individual decision,~~	

~~together with that decision. It shall make the opinion public together with the individual decision, having regard to the legitimate interest in the protection of professional secrecy.~~	
4. ~~Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.~~	
<u>Article 32a</u> <u>Cooperation and coordination</u>	LU (Comments): We generally support this Article. We also strongly support that the European Commission remains the sole enforcer of the DMA, with support by national competition authorities where this is useful and necessary. We would not support coopting national competition authorities as co-enforcers of the DMA. Exchange of information by the Commission with national authorities is crucial, see proposal for paragraph 3. We would also caution against an overly complex and formalised enforcement and cooperation mechanism, which would undermine an effective, speedy and coherent enforcement of the DMA. LT (Comments): 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. However, LT stresses that the Cion should remain **the only enforcer** of the DMA, as an alternative process could undermine the single market approach. Having this in mind, in our opinion Art 32a.1 and especially the wordings

	"complementary enforcement" or "and coordinate their enforcement actions" requires proper adjustment. IE (Drafting): ~~Article 32a~~ ~~Cooperation and coordination~~ BE (Drafting): Article 32~~a~~ 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 coordination and cooperation, similarly to what we have in the ECN+ directive. 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 be the supervisory authority for DMA. SE supports that national authorities should assist the Commission to the extent set out in the Commission's proposal. It is important that the resources of national

	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 that complement the impact assessment of the Commission´s proposal in line with p. 15 of the Interinstitutional Agreement of 13 April 2016 on better regulation under which the European Parliament and the Council, when they consider it appropriate and necessary for the legislative process, will carry out impact assessments of significant amendments to the Commission's proposal. SE would like a scrutiny reservation regarding article 32a. ES (Comments): The DMA proposal establishes different kinds of coordination, cooperation and participation of Member States (i.e. a coorperation more focus on competition issues -art.1.6-, and a wider cooperation -art. 1.5-). This would affect to the nature of the cooperation (technical vs political) and also to the bodies involved. Due to that, the coordination mechanisms should be sufficiently flexible for Member States to decide the representation required in the possible mechanisms. It should be pointed out that this article mainly refers to the coordination of 1.6. Nevertheless, there is not a direct reference to the coordination needed for article in 1.5. If the wording of article 1.5. is not revised, a specific reference to it should be included.
1. 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	LT

applied to gatekeepers within the meaning of this Regulation.	(Drafting): 1. 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.** LT (Comments): LT: Justification: It would be helpful in the DMA to have a legal ground which could be used by NCAs and other national enforcing authorities to secure necessary resources for implementation of the new functions, i.e.: - 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. 32a(1)&(4) closely cooperate with COM while supporting market investigations; - Art. 37a(1) assisting COM through the Digital Markets Advisory Committee. Suggested provision would be similar to already existing in ECN+ directive 2019/1, e.g. recitals 24 , 25 , 26 and Art 5. IE (Drafting): ~~1. 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.~~
2. National authorities shall not take decisions which run counter to a decision adopted by the Commission under this Regulation.	IE (Drafting): ~~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.	LU (Drafting): 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**. LU (Comments): In order to have normative value, this provision needs to mandate information exchange rather than just empower Member States to do so. This is also more consistent with paragraph 4. IE

	(Drafting): ~~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 (Comments): It should be clarified how this provision relates to Article 28 of Regulation 1/2003 on professional secrecy. ES (Drafting): 3. The Commission and ~~the competent authorities of the~~ Member States **and 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 of law, including confidential information.
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 (Drafting): ~~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).~~ SE

<table>
<tr><td></td><td>(Comments):

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, there 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.
ES

(Comments):

Problem of scope of cooperation: reference only to 1(6)
**Art. 1(7) (…) on the basis of the rules and principles established in Article 32.a</td></tr>
<tr><td></td><td></td></tr>
<tr><td>4. The Commission may ask competent authorities of the Member States to support any of its market investigations pursuant to this Regulation.</td><td>LT

(Comments):

LT: more information is needed to understand the scope of the possible obligation on the MSs side.
IE

(Drafting):

~~4. The Commission may ask competent~~

~~authorities of the Member States to support any of its market investigations pursuant to this Regulation.~~</td></tr>
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	SE (Drafting): SE (Comments): 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 investigation". 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 what parts of the market investigations such support is expected to be given. It should also be expressed that the competent authorities of the Member States *may* give such support to the extent that is possible regarding its state of resources. ES (Drafting): 4. The Commission may ask competent authorities of the Member States to support any of its market investigations pursuant to this Regulation.
6. 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.	IE (Drafting):

	. ~~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.~~ ES (Drafting): 6. Member States **and competent authorities** enforcing the rules referred to in Article 1(6) may consult the Commission on any matter relating to the application of this Regulation.
	IE (Drafting): Article 32a Coordination with Member States ***1. 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 enforceability and coherent implementation, the Commission shall be supported in every possible way by the expertise of the competent national competition authorities.*** ***2. 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.*** ***3. To this end, the Commission shall apply the provisions of this Regulation in close cooperation with the competent national competition authorities, acting within the European Competition Network as defined at point (5) of Article 2 of Directive (EU) 2019/1, in accordance with the provisions of this Article. It shall, in particular and as appropriate, make use of the European Competition Network System referred to in Article 33 of that Directive for the exchange of information.***

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4. 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 specific concerns or issues emerging at national level;
(d) at the request of the Commission, cooperate in the application of Articles 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 20; and
(iii) powers to conduct on-site inspections as set out in Article 21;
</td>
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	(e) make recommendations to the Commission on the update of obligations under Articles 5 and 6 and advice the Commission in the preparation of delegated acts according to Article 10; ***(f) monitor the international context, generate knowledge on the developments outside the Union and share enforcement experience.*** ***5. Member States shall ensure that their competent national competition authorities have the human, financial and technical resources that are necessary for the effective performance of their duties and exercise of their powers when applying Articles 101 and 102 TFEU as defined in paragraph 2 of this Article;*** ***6. The Commission and the competent national competition authorities enforcing the rules referred to in Article 1(6) shall have the power to provide each other with any matter of fact or of law, including confidential information. The information supplied to the Commission may be made available to the competent national competition authorities of other Member States. The competent national competition authorities may also exchange between themselves information necessary for the assessment of a case that they are dealing with under this Regulation.*** ***7. The competent national competition authorities shall, when acting pursuant to paragraph 3, inform the Commission in writing of the first formal investigative measure, before or immediately after the start of such measure. This information may also be made available to the competent national competition authorities of the other Member States.*** IE (Comments): Proposed amendment better highlights where national competition authorities will support the Commission, how they will do this, and that Member States shall ensure their NCAs have the necessary 'human, financial and technical resources.

Article 33 Request for a market investigation	LT (Comments): LT: general comment. LT could support that 3 MSs will be able to request a market investigation under the Art 16 and 17. However, we would not support lowering the threshold/number of MSs, which can present a request.
1. When three or more Member States request the Commission to open an investigation pursuant to Article 15 because they consider that there are reasonable grounds to suspect that a<u>n</u> ~~provider of core platform services~~<u>undertaking</u> should be designated as a gatekeeper, the Commission shall within four months examine whether there are reasonable grounds to open such an investigation<u> and the result of such examination shall be published</u>.	LU (Comments): We strongly support maintaining the "three or more Member States" as a threshold for requesting the Commission to open a market investigation. This is consistent with the logic of the the scope which defines gatekeepers that offer CPS in at least three Member States (Article 3.2.a). The DMA should not be triggered at the request of a single Member State. The 114 basis of the DMA means that issues that could trigger a market investigation need to have a Single Market dimension to them. Same comment for paragraph 1a. ES (Drafting): 1. When <u>**one or**</u> more Member States request the Commission to open an investigation pursuant to Article 15 because they consider that there are reasonable grounds to suspect that a<u>n</u> ~~provider of core platform services~~<u>undertaking</u> should be designated as a gatekeeper, the Commission shall within four months examine whether there are reasonable grounds to open such an investigation<u> and the result of such examination shall be published</u>.

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.	ES (Drafting): 1a. When **one 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 should be published.	LU (Drafting): ~~**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 should be published.**~~ LU (Comments):

	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. ES (Drafting): 1b. When **one 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 should be published.
2. Member States shall submit evidence in support of their request pursuant to Article 33(1), (1a) and (1b).	ES (Drafting): 2. Member States shall **reason** their request pursuant to Article 33(1), (1a) and (1b). ES (Comments): The burden for the request should be lower. It must be pointed out that the aim of the investigation itself is 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.

Article 33a Private enforcement	LU (Drafting): ~~**Article 33a**~~ ~~**Private enforcement**~~ LU (Comments): We are not convinced by this Article. This Article actively encourages diverging applications of the DMA via national courts. It is true that national courts may apply the directly applicable rules of the DMA in any case, which is why this explicit article is not needed. 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. In most Member States, it will be civil law courts where the rules differ from one Member State to another. Also, these courts may then send requests for preliminary ruling to the CJEU. The ultimate result will be fragmented application of the rules, which will potentially conflict with the enforcement by the Commission and possibly stall the implementation of obligations by gatekeepers. Any incentive that undermines a uniform and harmonised application of the rules should be avoided. 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 (Comments): LT. Although LT understands the reasoning behind the new Art, more

	information is needed. 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. IE (Comments): 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 these rights. Overall, it is unclear what the intended purpose of this new Article is. Given that the DMA will be limited in its application to a finite number of large undertakings designated as gatekeepers under the DMA, it is unclear as to what private enforcement in this context would be intended to achieve. Ireland awaits Council Legal Service opinion on the compatibility of the legal basis of the DMA (114 TFEU) to deliver harmonisation and Article 33a and the risk unrestricted private enforcement would introduce in terms of fragmentation. CZ (Comments):

	CZ thinks that this wording of the new Article might lead to the risk of fragmentation of interpretation of the provisin with regard to issue of a parallel aplication of the DMA by the Commision 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 demages 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. Eventually CZ thinks this Article 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. FI (Comments): 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 gatekeepers' non-compliance with the obligations? Or would the article be limited to giving national courts the power to verify with a decision a breach of Articles 5 and/or 6 in order for the said decision to be used as a basis for damages claims by undertakings affected by the

	gatekeepers' infringement? SE (Drafting): Cooperation and coordination between the Commission and national courts in ~~P~~private enforcement. SE (Comments): According to SE, the regulation is directly applicable, but the question is whether the regulation has direct effect and can be invoked before national courts without the provision in question. As SE understand the assessment put forward by the Commission and the Council Legal Service at the meeting of the 23rd of July, the regulation has, according to EU law, direct effect even without this article and that the aim of the article is to regulate the cooperation and coordination between the Commission and the national courts. If this is the case it should, according to SE, be clarified in the title of the article and in p.1. SE would appreciate if the detailed reasons for the direct effect of the regulation could be clarified again at the next meeting. SE would like a scrutiny reservation for article 33a.

<table>
<tr><td></td><td>ES

(Drafting):

<s>Article 33a</s>
<s>Private enforcement</s>
ES

(Comments):

The scope/pursopose of this article is not clear. Neither its implications regarding the “application” of the Regulation.
Moreover, the effects on market fragmentation are not clear. If this article is to be added, it should prevent the conflict between resolutions of different national courts and guarantee the consistency of the enforcement. It is not clear if the Commission´s participation as amicus curiae can solve the inconsistency problems.
CLS clarification would be needed before providing drafting suggestions.</td></tr>
<tr><td></td><td></td></tr>
<tr><td>1. <u>National courts shall have the power to apply Articles 5 and 6 of this Regulation.</u></td><td>LU

(Drafting):

<s>1. National courts shall have the power to apply Articles 5 and 6 of this Regulation.</s>
IE

(Drafting):

1. <u>National courts shall have the power to</u> <u>apply Articles 5 and 6 of this Regulation.</u></td></tr>
</table>

	SE (Drafting): 1. According to EU law, ~~N~~national courts ~~shall~~ have the power to apply Articles 5 and 6 of this Regulation. SE (Comments): The purpose of the amendment is to clarify that the Regulation does not confer any new powers to national courts. ES (Drafting): ~~1. 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.	LU (Drafting): ~~**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.**~~ ES (Drafting): ~~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.~~
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 is notified to the parties.	LU (Drafting): **~~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 is notified to the parties.~~** ES (Drafting): ~~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 is 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.	LU (Drafting): **~~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.~~** ES

	(Drafting): ~~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.~~
<u>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.</u>	LU (Drafting): **~~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.~~** ES (Drafting): ~~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.~~
<u>6. National courts shall not give a decision which run 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.</u>	LU (Drafting): **~~6. National courts shall not give a decision which run 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.**~~ LU (Comments): This goes against the independence of the judiciary. SE (Comments): SE would appreciate if the Presidency could develop on the practical application of this paragraph at the next meeting. Regarding the second sentence, SE wonders how the national courts will have information about a decision contemplated by the Commission in proceedings it has initiated. ES (Drafting): ~~6. National courts shall not give a decision which run 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.~~
Chapter VI	
General provisions	

Article 34 Publication of decisions	ES (Drafting): Article 34 ~~Publication of decisions~~ **Transparency tool**
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. Such publication shall state the names of the parties and the main content of the decision, including any penalties imposed.	IE (Drafting): 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. Such publication shall state the names of the parties and the main content of the decision, including any penalties imposed and a report stating the grounds for such a decision. IE (Comments): For transparency purposes a short report should accompany Commission decisions. ES (Drafting): 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.

	Such publication shall state the names of the parties and the main content of the decision, including any penalties imposed.
	ES (Drafting): **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 this Regulation and could be deemed to be a non-compliance of it.** ES (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 DMA. 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. Besides, the establishment of a reporting mechanism will allow third parties to inform the Commission of all those practices carried out by Gatekeepers that may imply a breach of the obligations provided for in this Regulation.

	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.
2. The publication shall have regard to the legitimate interest of gatekeepers or third parties in the protection of their confidential information.	ES (Drafting): ~~2~~**4**. The publication shall have regard to the legitimate interest of gatekeepers or third parties in the protection of their confidential information.
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	
1. The Commission may adopt implementing acts concerning: ~~3, 6, 12, 13, 15, 16, 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;	

(g) the practical arrangements for the negotiated disclosure of information provided for in Article 30;	
(aa) the practical arrangements for the cooperation and coordination between the Commission and Member States provided for in Article 32a.	SE (Comments): SE has no comments on the amendments, with the reservation for new provisions on national authorities that will be included in the regulation. In that case SE may consider that some elements should be included directly in the regulation.
2. ~~the practical arrangements for the cooperation and coordination between the Commission and Member States provided for in Article 1(7).~~Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article ~~32~~37a(~~4~~2). Before the adoption of any measures pursuant to paragraph 1, the Commission shall publish a draft thereof and invite all interested parties to submit their comments within the time limit it lays down, which may not be less than one month.	
Article 37 Exercise of the delegation	
1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.	

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 each period.	
3. The delegation of power 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 or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.	
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 by the Council within a period of two months of notification of that 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 of the Council.	
Article 37a Committee procedure	
1. The Commission shall be assisted by a committee (‘the Digital Markets Advisory Committee’). That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.	
2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.	LT (Comments): LT supports DK proposal to list all decisions requiring the advisory procedure.
Where the opinion of the committee is to be obtained by written procedure, that procedure shall be terminated 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 committee to the addressee of an individual decision, together with that decision. It shall make the opinion public together with the individual decision, having regard to the legitimate interest in the protection of professional secrecy.	
Article 38 Review	

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 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, ~~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.	LT (Comments): LT welcomes the change. IE (Drafting): The evaluations shall establish whether it is required to modify, add or remove ~~additional~~ rules, including 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, ~~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 Article 3.** .
3. Member States shall provide any relevant information they have that the Commission may require for the purposes of drawing up the report referred to in paragraph 1.	SE (Drafting): The competent authorities of the Member States shall provide any relevant

	information they have that the Commission may require for the purposes of drawing up the report referred to in paragraph 1. SE (Comments): This paragraph should be amended in line with the amendment in article 19.6.
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*.	
2. This Regulation shall apply from six months after its entry into force.	LU (Drafting): 2. This Regulation shall apply from ~~six~~ **eighteen** months after its entry into force. LU (Comments): Eighteen months seems to be a more appropriate timeframe to allow for all the implementing measures to be in place. LT (Comments):

	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~~six~~ months after its entry into force. IE (Comments): Ireland still has concerns about the DMA's timeline for entry into force and application. We do appreciate the timeline here corresponds with the obligations but the Compromise text formalises new roles for National Competent Authorities and the 6 month currently dedicated to transposition is unrealistic and will, we feel, be too short for some Member States.
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].	
3. This Regulation shall be binding in its entirety and directly applicable in all Member States.	
Done at Brussels,	
For the European Parliament For the Council	
The President The President	

	General comments
	LT (Comments): 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 reservation. BE (Comments): *We maintain our scrutiny reservation and reserve our right for further comments during the course of the negotiations.*
END	**END**