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Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on contestable and fair markets in the digital sector (Digital Markets Act)

(Text with EEA relevance)

{SEC(2020) 437 final} - {SWD(2020) 363 final} - {SWD(2020) 364 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

Digital services have brought important innovative benefits for users and contributed to the internal market by opening new business opportunities and facilitating cross-border trading. Today, these digital services cover a wide range of daily activities including online intermediation services, such as online marketplaces, online social networking services, online search engines, operating systems or software application stores. They increase consumer choice, improve efficiency and competitiveness of industry and can enhance civil participation in society. However, whereas over 10 000 online platforms operate in Europe's digital economy, most of which are SMEs, a small number of large online platforms capture the biggest share of the overall value generated.

Large platforms have emerged benefitting from characteristics of the sector such as strong network effects, often embedded in their own platform ecosystems, and these platforms represent key structuring elements of today's digital economy, intermediating the majority of transactions between end users and business users. Many of these undertakings are also comprehensively tracking and profiling end users.¹ A few large platforms increasingly act as gateways or gatekeepers between business users and end users and enjoy an entrenched and durable position, often as a result of the creation of conglomerate ecosystems around their core platform services, which reinforces existing entry barriers.

As such, these gatekeepers have a major impact on, have substantial control over the access to, and are entrenched in digital markets, leading to significant dependencies of many business users on these gatekeepers, which leads, in certain cases, to unfair behaviour vis-à-vis these business users. It also leads to negative effects on the contestability of the core platform services concerned. Regulatory initiatives by Member States cannot fully address these effects; without action at EU level, they could lead to a fragmentation of the Internal Market.

Unfair practices and lack of contestability lead to inefficient outcomes in the digital sector in terms of higher prices, lower quality, as well as less choice and innovation to the detriment of European consumers. Addressing these problems is of utmost importance in view of the size of the digital economy (estimated at between 4.5% to 15.5% of global GDP in 2019 with a growing trend) and the important role of online platforms in digital markets with its societal and economic implications.²

Although some of these phenomena specific to the digital sector and to core platform services are also observed to some extent in other sectors and markets, the scope of the proposal is limited to the **digital sector** as there the problems are the most pressing from an internal market perspective.

¹ Such tracking and profiling of end users online is as such not necessarily an issues, but it is important to ensure that this is done in a controlled and transparent manner, in respect of privacy, data protection and consumer protection.

² For example, the importance of ensuring a level playing field that supports essential values such as cultural diversity and media pluralism was for instance stressed by the Council in its conclusions on the strengthening of European content in the digital economy and on safeguarding a free and pluralistic media system.

Weak contestability and unfair practices in the digital sector are more frequent and pronounced in certain digital services than others. This is the case in particular for widespread and commonly used digital services and infrastructures that mostly directly intermediate between business users and end users. The enforcement experience under EU competition rules, numerous expert reports and studies and the results of the OPC show that there are a number of digital services that have the following features: (i) highly concentrated multi-sided platform services, where usually one or very few large digital platforms set the commercial conditions with considerable autonomy; (ii) a few large digital platforms act as gateways for business users to reach their customers and vice-versa; and (iii) gatekeeper power of these large digital platforms is often misused by means of unfair behaviour vis-à-vis economically dependent business users and customers.³ The proposal is therefore further limited to a number of ‘**core platform services**’ where the identified problems are most evident and prominent and where the presence of a limited number of large online platforms that serve as gateways for business users and end users has led or is likely to lead to weak contestability of these services and of the markets in which these intervene. These core platform services include: (i) **online intermediation services** (incl. for example marketplaces, app stores and online intermediation services in other sectors like mobility, transport or energy) (ii) **online search engines**, (iii) **social networking** (iv) **video sharing platform services**, (v) **number-independent interpersonal electronic communication services**, (vi) **operating systems**, (vii) **cloud services** and (viii) **advertising services**, including advertising networks, advertising exchanges and any other advertising intermediation services, where these advertising services are being related to one or more of the other core platform services mentioned above.

The fact that a digital service qualifies as a core platform service does not mean that issues of contestability and unfair practices arise in relation to every provider of these core platform services. Rather, these concerns appear to be particularly strong when the core platform service is operated by a gatekeeper. Providers of **core platform providers** can be deemed to be **gatekeepers** if they: (i) **have a significant impact on the internal market**, (ii) **operate one or more important gateways to customers** and (iii) **enjoy or are expected to enjoy an entrenched and durable position in their operations**.

Such gatekeeper status can be determined either with reference to clearly circumscribed and appropriate quantitative metrics, which can serve as rebuttable presumptions to determine the status of specific providers as a gatekeeper, or based on a case-by-case qualitative assessment by means of a market investigation.

The identified gatekeeper-related problems are currently not (or not effectively) addressed by existing EU legislation or national laws of Member States. Although legislative initiatives have been taken or are under consideration in several Member States, these will not be sufficient to address the problems. Whilst such initiatives are limited to the national territory, gatekeepers typically operate cross-border, often at a global scale and also often deploy their business models globally. Without action at EU level, existing and pending national legislation has the potential to lead to increased regulatory fragmentation of the platform space.

The objective of the proposal is therefore to allow platforms to **unlock their full potential** by addressing at EU level the most salient incidences of unfair practices and weak contestability

³ See also Section 5.2.1 of the Impact Assessment for further details.

so as to allow end users and business users alike to **reap the full benefits of the platform economy** and the the digital economy at large, in a contestable and fair environment.

The need to address these concerns in the digital economy was stressed in the Commission Communication ‘Shaping Europe’s digital future’⁴ which considered that, *‘based on the single market logic, additional rules may be needed to ensure contestability, fairness and innovation and the possibility of market entry, as well as public interests that go beyond competition or economic considerations’*. It also announced that the Commission *‘will further explore,(...), ex ante rules to ensure that markets characterised by large platforms with significant network effects acting as gatekeepers, remain fair and contestable for innovators, businesses, and new market entrants’*.

- **Consistency with existing policy provisions in the policy area**

This proposal builds on the existing P2B Regulation⁵, without conflicting with it. The definitions used in the present proposal are coherent with that Regulation, in particular the definitions of ‘online intermediation services’ and ‘online search engines’. In addition to the baseline of transparency and fairness rules applicable to all online platforms regardless of their size or position introduced in the P2B Regulation, the present proposal establishes clearly defined obligations vis-a-vis a very limited number of cross-border providers of core platform services that serve as important gateways for business users to reach end users. Finally, the Commission can benefit in its enforcement of those obligations from the transparency that online intermediation services and online search engines have to provide under the P2B Regulation on practices that could be illegal under the list of obligations if engaged in by gatekeepers.

The proposal is also fully coherent with the proposal for a Digital Services Act (‘DSA’). The DSA is a horizontal initiative focusing on issues such as liability of online intermediaries for third party content, safety of users online or asymmetric due diligence obligations for different providers of information society services depending on the nature of the societal risks such services represent. In contrast, the DMA proposal is concerned with economic imbalances, unfair business practices by gatekeepers and their negative consequences, such as weakened contestability of platform markets.

- **Consistency with other Union policies**

The proposal is coherent with the Commission’s digital strategy in its contribution to ensuring a fair and competitive digital economy, one of the three main pillars of the policy orientation and objectives announced in the Communication ‘Shaping Europe's digital future’. It will constitute a coherent, effective and proportionate framework to address problems in the digital economy that currently cannot be tackled or cannot be tackled effectively.

The proposal complements existing EU (and national) competition rules. It addresses unfair practices by gatekeepers that either fall outside the existing EU competition rules, or that cannot be as effectively addressed by these rules, considering that antitrust enforcement concerns the situation of specific markets, inevitably intervenes after the restrictive or abusive conduct has occurred and involves investigative procedures to establish the infringement that

⁴ Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services (Text with EEA relevance), OJ L 186, 11.7.2019, p. 57.

⁵ Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services (Text with EEA relevance), OJ L 186, 11.7.2019, p. 57.

take time. The current proposal minimises the detrimental structural effects of unfair practices ex ante, without limiting the ability to intervene ex post under EU and national competition rules.

The proposal is aligned with other EU instruments, including with the EU Charter of Fundamental Rights and the European Convention of Human Rights ('ECHR'), the General Data Protection Regulation⁶, and the EU's consumer law acquis.

The proposal complements the data protection laws. Transparency obligations on deep consumer profiling will help inform General Data Protection Regulation ('GDPR') enforcement, whereas mandatory opt-out for data combination across core platform services supplements the existing level of protection under the GDPR. The proposal clarifies that it is for the gatekeepers to ensure that compliance with the obligations laid down in the Regulation should be done in full compliance with other EU law, such as protection of personal data and privacy or consumer protection.

The proposal is also coherent with the targeted and tailor-made ex ante regulation of specific sectors, including the rules applicable to electronic communication services or short-selling as well as with existing initiatives targeting harmful trading practices in the offline world.⁷

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

Member States apply or are considering to apply divergent national rules to address the problems arising from the significant degree of dependency of business users on core platform services provided by gatekeepers and the consequent problems arising from their unfair conduct vis-à-vis their business users. That situation creates regulatory fragmentation insofar as the rules on addressing unfairness in dependency relationships with such gatekeepers and contestability regarding those services diverge in particular as to the preconditions to intervene and as to the depth of the intervention, and increase compliance costs for companies operating in the internal market. Without action at EU level, this will be further aggravated with the adoption of new initiatives pending in several Member States, whereas in other Member States the unfairness and reduced contestability of core platform services provided by gatekeepers remain unaddressed. Given the intrinsic cross-border nature of the core platform services provided by gatekeepers, regulatory fragmentation will seriously undermine the functioning of the Single Market for digital services as well as the functioning of digital markets at large. Therefore, harmonisation at EU level is necessary and Article 114 of the Treaty on the Functioning of the European Union ('TFEU') is the relevant legal basis for this initiative.

⁶ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (Text with EEA relevance), OJ L 119, 4.5.2016, p. 1.

⁷ See for example [Directive \(EU\) 2019/633 of the European Parliament and of the Council of 17 April 2019 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain](#). To improve farmers' and small and medium sized businesses' position in the agri-food supply chain, the EU adopted this legislation prohibiting certain unfair trading practices between weaker supplier towards stronger buyers. These include (but are not limited to): late payments for perishable food products, last minute order cancellations, unilateral changes to contracts, refusal to enter into a written contract, returning unsold or wasted products or payment for buyer's marketing.

- **Subsidiarity**

The objectives of the proposal cannot be achieved by Member States acting alone, as the problems are of a cross-border nature, and not limited to single Member States or to a subset of Member States. The digital sector as such and in particular the core platform services provided or offered by gatekeepers are of a cross-border nature, as is evidenced by the volume of cross-border trade, and the still untapped potential for future growth, as illustrated by the pattern and volume of cross-border trade intermediated by digital platforms. Almost 24% of total online trade in Europe is cross-border.

Digital players typically operate across several Member States, if not on an EU-wide basis, which, today, is particularly the case for services such as online advertising, online social networking services, online marketplaces, cloud computing services, online search services, video-sharing platform services, number-independent interpersonal communication services or operating systems. Accordingly, the problems identified have Union relevance, as they arise across borders and affect several Member States, thus not being limited to the territory of a Member State.⁸ That is in particular the case for core platform services provided or offered by gatekeepers.

Even those Member States who have not yet adopted legislation to address unfairness and reduced contestability of core platform services provided or offered by gatekeepers are increasingly considering national measures to that effect. Different national legislation within the EU, besides being insufficiently effective, may lead to increased fragmentation and compliance costs for large market players and the business users that rely on them. At the same time, start-ups and smaller businesses are also negatively impacted by this situation, as it impedes them from scaling-up and from cross-border expansion, thereby reaching new markets, offering better and diversified products at more competitive prices and, as the case may be, growing into challengers of established players in the digital sector. Therefore, by addressing unfair practices in respect of core platform services operated by gatekeepers at Union-level, the functioning of the internal market will be improved through clear behavioural rules that give all stakeholders legal clarity and through an EU-wide intervention framework allowing to address effectively harmful practices in a timely and effective manner. One of the conditions for the designation as gatekeeper is that the provider of core platform services has a significant impact on the internal market.

- **Proportionality**

The proposal aims to contribute to the proper functioning of the Single Market for digital services by ensuring that markets across the Union where gatekeepers are present are contestable and fair. This should promote innovation, high quality of digital products and services, fair and competitive prices, and free choice for users in the digital sector.

In this context, the proposal focuses only on those digital services that are most widely used by business users and end users (“**core platform services**”) and where, based on current conditions, concerns about weak contestability and unfair practices by gatekeepers are more apparent and pressing from an internal market perspective. The core platform services in

⁸ The replies of citizens and stakeholders to the Commission’s Open Public Consultation (‘OPC’) and the feedback of the National Competition Authorities (‘NCAs’) replying to the Commission’s questionnaire indicate that market failures appear to be widespread across the Union, in particular in digital markets of cross-border nature. See [Summary of the Stakeholder Consultation on the New Competition Tool](#) and [Summary of the contributions of the NCAs to the impact assessment of the new competition tool](#). While respondents indicated that market failures may occur in all industry sectors, several respondents emphasised that they are particularly prominent in the digital sphere. See also Annex 5.4 of the Impact Assessment.

scope are only those where there is strong evidence of (i) high concentration, where usually one or very few large online platforms set the commercial conditions with considerable autonomy from their (potential) challengers, customers or consumers; (ii) dependence on a few large online platforms acting as gateways for business users to reach and have interactions with their customers; and (iii) the power by core platform service providers often being misused by means of unfair behavior vis-à-vis economically dependent business users and customers.

The proposal therefore applies only to those providers that meet clearly defined criteria for being considered a gatekeeper, which are set out above. The use of quantitative thresholds, as the basis of a rebuttable presumption, is complemented by the use of qualitative criteria specified in the proposal. That allows the Commission to designate as gatekeepers the providers of core platform services that exhibit the same or similar risks for fairness and contestability of the market and at the same time guarantees that the obligations apply to the relevant providers of core platform services only.

The list of obligations foreseen by the proposal has been limited to those practices (i) that are particularly unfair or harmful, (ii) which can be identified in a clear and unambiguous manner to provide the necessary legal certainty for gatekeepers and other interested parties, and (iii) for which there is sufficient experience. The proposal provides for the possibility of a tailored application of some of the obligations through a dialogue between the Commission and the gatekeepers concerned. In addition, it allows to cover in a flexible way additional practices that are similarly unfair or that equally put fairness or contestability at risk after a thorough market investigation on the impact of those practices. This mechanism ensures that there is no over-regulation while at the same time avoiding a lack of intervention in relation to similar practices by the same gatekeepers, where practices may evolve over time.

The proposed measures are proportionate since they achieve their objective by only imposing a burden on undertakings in the digital sector in a targeted manner. The proposal requires the cooperation of those companies that are subject to an investigation, but the administrative costs would be proportional and would be unlikely to require significant additional costs in view of the already existing regulatory structures due to the application of other pieces of EU legislation (e.g. EU Merger Regulation; Consumer Protection Cooperation ('CPC') Regulation). As regards the compliance costs for gatekeepers, they would be reasonable, since they would largely substitute for the high costs that large providers of core platform services incur for complying with divergent regulatory measures gradually put or likely to be put in place in different Member States. Such costs would imply some additional legal compliance officers to check company policies against the new rules and some employees to interface with the Commission and respond to requests for information.⁹

- **Choice of the instrument**

Only a legislative instrument can effectively address the problems identified. A Regulation is in addition necessary, as it is directly applicable in Member States, establishes the same level of rights and obligations for private parties, and enables the coherent and effective application of rules in the inherently cross-border online intermediated trade generated in the online platform economy. This is most suited to address the problems of fairness and contestability identified and prevent fragmentation of the Single Market for core platform services provided or offered by a gatekeeper.

⁹ See Section 6.6.1. of the Impact Assessment for further analysis.

3. RESULTS OF STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

• Stakeholder consultations

The Commission has consulted widely on a broad range of online platform-related issues, including the economic power of very large online platforms with a gatekeeping role.

First, between 2 June and 8 September 2020, the Commission ran two separate open public consultations which were referring to two separate Inception Impact Assessments for (i) the Digital Services Act package: Ex ante regulatory instrument for large online platforms with significant network effects acting as gate-keepers in the European Union's internal market;¹⁰ and the other one for (ii) the New Competition Tool.¹¹

Second, the Commission ran a stakeholder consultation on the interim reports by the Observatory for the Online Platform Economy¹², supporting the current initiative.¹³

Thirdly, workshops,¹⁴ conferences¹⁵ as well as research conducted by the JRC informed the problem definition and helped identify preliminary policy options. In addition to the consultation tools used, the Commission's services also met bilaterally with stakeholders in the context of the public consultations and the feedback period for the inception impact assessments.

Finally, a structured dialogue with Member States, notably through the e-Commerce expert group and bilateral and multilateral exchanges and conferences contributed to the design of policy options.

In general, the public consultations offered strong support for an intervention tackling unfair practices engaged in by gatekeepers. In fact, the large majority of the respondents to the public consultations and to a separate questionnaire addressed to national competition authorities agreed that there are structural problems that cannot be addressed under the existing competition rules; the same majority believed that the Commission should be able to intervene in markets where gatekeepers are present. This view was expressed by a large majority of businesses and business associations, all civil society organisations (including Non-Governmental Organisations ('NGOs') and trade unions) and all public authorities.¹⁶ Consumer organisations like BEUC have also prominently flagged the particular concerns

¹⁰ <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12418-Digital-Services-Act-package-ex-ante-regulatory-instrument-of-very-large-online-platforms-acting-as-gatekeepers> and <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12416-New-competition-tool>.

¹¹ The detailed overview of the results of these consultations is presented in Annex 2 to the Impact Assessment.

¹² <https://platformobservatory.eu/>.

¹³ <https://ec.europa.eu/digital-single-market/en/news/commission-expert-group-publishes-progress-reports-online-platform-economy>.

¹⁴ Observatory for the Online Platform Economy Workshop on Market power and Online Advertising, 29 January 2020; on 28 July 2020 and 10 September 2020 ICF, WIK-Consult GmbH, Cullen International, and CEPS organised high-level academic expert panels to support the Commission in the preparation of the Impact Assessment of platforms with significant network effects acting as gatekeeper.

¹⁵ Such as the conference "Shaping competition policy in the era of digitisation":

<https://ec.europa.eu/competition/scp19/>.

¹⁶ Summary of the Open Public Consultation Ex Ante Rules, [Summary of the Stakeholder Consultation on the New Competition Tool](#) and [Summary of the contributions of the NCAs to the impact assessment of the new competition tool please see Annex 2 to the Impact Assessment](#).

surrounding online platforms and digital markets.¹⁷ Those respondents considered that an intervention tackling these concerns would both create the right innovation incentives, and contribute to increased consumer choice paving the way for new platforms and innovative and privacy-friendly services.

Online platforms were split on the issue, with the majority of large online platforms and their representative associations questioning the need for a new gatekeeper instrument. On the other side, many small and medium sized platforms, in particular those that are business users of large online platforms, expressed their support for a new gatekeeper instrument.

Those disagreeing referred to the fact that the concept of a gatekeeper is too broad and should instead be assessed on a case-by-case basis and that the Commission can already intervene in the case of the conduct of a gatekeeper contravening Article 102 TFEU. However, the Commission considered that Article 102 TFEU is not sufficient to deal with all the problems associated with gatekeepers, given that a gatekeeper may not necessarily be a dominant player, and its practices may not be captured by Article 102 TFEU if there is no demonstrable effect on competition within clearly defined relevant markets. Moreover, Article 102 TFEU does not always allow intervening with the speed that is necessary to address these pressing practices in the most timely and thus most effective manner.

The vast majority of respondents also considered that dedicated rules on platforms should include prohibitions and obligations for gatekeeper platforms. They also suggested that remedies could be more procedural in nature rather than prescribing a given course of conduct. The large majority of stakeholders believed that the proposed list of problematic practices, or “blacklist”, should be targeted to clearly unfair and harmful practices of gatekeeper platforms.

As regards the definition of a gatekeeping position, the stakeholder views were split. Some platforms argued that incorporating different services into the offering of a single platform company says little about the strength of a platform, as would also be the case for the ability to leverage assets from one area to another. It was suggested that gatekeeper designations should be business model agnostic, gatekeeper assessments should be reviewed periodically, gatekeeper designations should apply to identified activities, and some rules should apply on a sector-wide basis.

In general, stakeholders of all categories pointed out the need to ensure a high level of coherence and legal certainty, the need to ensure that the criteria used to identify gatekeepers should be transparent, objective and easily measurable. Users mostly referred to a combination of both quantitative and qualitative criteria.

National Authorities expressed their support for a new gatekeeper instrument and the need for an EU-level approach to avoid regulatory fragmentation, whilst emphasizing the importance of involving the responsible national government representatives in the legislative project in advance.

Civil society and media publishers also strongly supported a new gatekeeper instrument. Both called for an adequate degree of transparency in the market as well as the guarantee of a certain degree of media diversity and the respect of consumers' autonomy and choice.

- **Collection and use of expertise**

¹⁷ For example, BEUC’s reply to the OPC states that the “challenges posed in particular by large players in digital markets require new instruments in addition to traditional competition law enforcement in order to protect consumers’ interests in an effective and timely manner.”

The present initiative is supported by an impact assessment study and several external support studies.¹⁸ In addition, several public consultations and multiple studies and reports were carried out by the Commission or external contractors between 2018 and 2020. The Observatory for the Online Platform Economy supported by its expert group of 15 academic experts as well as by a large support study, provided a number of reports and analytical papers feeding into the work on the definition of problems. In-house economic research as well as policy design support by the Joint Research Centre ('JRC') further informed the Impact Assessment underlying this initiative. Member States were in addition consulted through an online consultation, which fed into a meeting of the e-commerce expert group dedicated to this initiative. Finally, the Commission organised a number of conferences, workshops and meetings with academic experts, whose views have contributed to the problem framing and evidence collection strategy. A number of Member States' position papers on gatekeeper platforms, as well as numerous reports and studies from countries outside the EU, all contributed to the shaping of the instrument.¹⁹

- **Impact assessment**

The Impact Assessment underpinning the proposal was considered by the Commission's Regulatory Scrutiny Board, which issued a positive opinion on 10 December 2020. The opinion of the Board, the recommendations and an explanation of how they have been taken into account are included in Annex 1 of the Staff Working Document accompanying this proposal. Annex 3 provides an overview of who would be affected by this proposal and how.

The Commission examined different policy options to achieve the general objective of the present initiative, which is to ensure the proper functioning of the internal market by promoting effective competition in digital markets and in particular a contestable and fair online platform environment.

In order to address the problems stemming from problematic gatekeeper conduct, three main policy options were compared: **Option 1 - Pre-defined list of gatekeepers and self-executing obligations**; **Option 2 - Partially flexible framework of designation and updating of obligations, including regulatory dialogue for the implementation of some**; and **Option 3 - Flexible option based exclusively on qualitative scoping thresholds**. Each of these options left more detailed design choices open for political consideration, for example around the precise combination and level of the quantitative scoping thresholds to be used or the exact scope of the remedies available in case of a systematic non-compliance with the obligations by the designated gatekeeper.

All options envisaged implementation, supervision and enforcement at the EU level by the Commission as the competent regulatory body. Given the pan-European reach of the targeted companies, a decentralised enforcement model does not seem to be a conceivable alternative, including in light of the risk of regulatory fragmentation that the initiative is meant to address, nor would it be proportionate given the limited number of gatekeepers that would be in scope of the proposed framework. However, to integrate the national expertise in the platform economy, the initiative envisages that the Commission consults before taking certain decisions (e.g. on non-compliance; fines) a committee composed of representatives of Member States – the Digital Markets Advisory Committee.

¹⁸ Impact Assessment Support Study (ICF); M. Motta & M. Peitz (2020), [Intervention trigger and underlying theories of harm - Expert advice for the Impact Assessment of a New Competition Tool](#); G. S. Crawford, P. Rey, & M. Schnitzer (2020), [An Economic Evaluation of the EC's Proposed "New Competition Tool"](#).

¹⁹ See also Section 5 of Annex 1 of the Impact Assessment on the various sources of evidence used.

The preferred option (**Option 2**) is constituted by (a) a closed list of core platform services; (b) a combination of quantitative and qualitative criteria to designate providers of core platform services as gatekeepers; (c) directly applicable obligations, including certain obligations where a regulatory dialogue may facilitate their effective implementation; and (d) a possibility for the Commission to update the instrument, following a market investigation, as regards the obligations for gatekeepers, by way of delegated acts insofar as new practices are identified that are equally unfair and likely to impair contestability and through amending proposals in the other cases. Market investigations may also point to the need for an amendment of the list of core platform services.

This option was considered to be able to address in the most effective way the objectives of this initiative. It provides for timely intervention for all the identified problematic practices, while allowing for some of these a regulatory dialogue for implementing measures by the designated gatekeeper. It further allows tackling new unfair practices, thus enabling to address market failures in the dynamically changing digital environment. At the same time, for those gatekeepers that are foreseen to have an entrenched and durable position in their operations in the near future, but who do not yet enjoy such a position, the proposal identifies a proportionate sub-set of obligations that are particularly relevant to safeguard and enhance contestability.

The preferred option will increase the contestability of core platform services and the broader digital sector, and it will help businesses overcome the barriers stemming from market failures or from gatekeepers' unfair business practices. This will help to foster the emergence of alternative platforms, which could deliver high-quality, innovative products and services at affordable prices. Fairer and more equitable conditions for all players in the digital sector would allow them to take greater advantage of the growth potential of the platform economy.

The benefits can be expected to lead to a greater innovation potential amongst smaller businesses as well as an improved quality of service, with associated increases in consumer welfare. The improved contestability of core platform services under the preferred option has the potential to yield a consumer surplus estimated at EUR 13 billion, i.e. an increase of around 6% as compared to the baseline scenario.²⁰

The main cost relates to compliance costs for gatekeepers as a result of the new rules. Businesses other than gatekeeper platforms may incur certain administrative costs when complying with information requests. These latter costs are, however, unlikely to represent a substantial increase from compliance costs businesses would otherwise incur due to information requests in EU competition law cases or under different specific national rules.

The impacts of the policy options on different categories of stakeholders (gatekeepers, competitors, business users, consumers, regulatory authorities) are explained in detail in Annex 3 of the Impact Assessment supporting this initiative. The annex also assesses the impact of each obligation per stakeholder category impacted. The assessment is both quantitative and qualitative to the extent possible.

Concerning the impact of the initiative on SMEs, since they are very unlikely to qualify as gatekeepers and would not be targeted by the list of obligations, this initiative would not impose an additional burden on them. The new rules, by levelling the playing field would instead allow SMEs (including business users and other providers of core platforms services) to grow throughout the internal market as a result of the removal of important barriers to entry and expansion. It could be expected that the measures envisaged would also result in more

²⁰ See Annex 3 to the Impact Assessment.

competition among platforms for business users. This is expected to lead to higher quality services at more competitive prices, coupled with a higher productivity. Business users would also have more confidence in selling online, as they would be protected from unfair practices.

A more comprehensive enforcement toolkit will allow businesses to thrive on the merits of their abilities. This will result in economic growth, which in turn translates into higher tax revenues for national administrations. The burden on the Commission for implementing this initiative is low (mainly redeployment of existing job positions) compared to the benefits for the economy. National authorities would have to bear some minor administrative costs.

Fairness and enhanced contestability in the digital sector would result in higher productivity, which would translate into higher economic growth. The promotion of greater contestability of core platform services and digital markets is also of particular importance in increasing trade and investment flows.

- **Regulatory fitness and simplification**

This proposal lays down measures that will apply to large providers of core platform services that meet the conditions to be designated as gatekeepers. Other providers of core platform services and of ancillary services, business users and end users will benefit from the clearly defined and circumscribed obligations that are laid down therein. The proposal also specifically aims at facilitating the sustainable growth of core platform services and the platform economy more broadly and is designed to be fully technologically-neutral.

- **Fundamental rights**

The proposal is aligned with the EU Charter of Fundamental Rights, the European Convention on Human Rights ('ECHR') as well as the GDPR.

The introduction of the dynamic updating of unfair practices would be subject to ensuring a full respect for the fundamental rights to fair proceedings and good administration as enshrined in the ECHR, which are binding on the EU institutions.

When acting under the new framework the Commission's investigation powers would be subject to the full scope of fair process rights such as the right to be heard, the right to a reasoned decision and access to judicial review, including the possibility to challenge enforcement and sanctioning measures. These rights apply in case of administrative proceedings.²¹

Moreover, the fair and trusted legal environment that this proposal aims to create shall contribute to safeguarding an appropriate balance between the respective freedoms to conduct a business of providers of core platform services and their business users (Article 16 of the Charter of Fundamental Rights of the European Union).

4. BUDGETARY IMPLICATIONS

In order to optimally achieve the objectives of this initiative, it is necessary to finance a number of actions both at the Commission level, where the redeployment of 80 FTEs is envisaged, and at Member State level through their active participation in the Digital Markets Advisory Committee, composed of the representatives of Member States. The total financial resources necessary for the implementation of the proposal in the 2021-2027 period will amount to EUR 81,090 million, including EUR 50,640 million of administrative costs and

²¹ *Ibid*, at Chapter V and Chapter X.

EUR 30,450 million entirely covered by the allocations foreseen in the MFF 2021-27 under the financial envelopes of the Single Market Programme and the Digital Europe Programme. The financing will support *inter alia* activities such as carrying out the designation of providers of core platform services, carrying out market investigations and performing any other investigative actions, enforcement actions and monitoring activities. The financing will also support carrying out a regular review of specific elements of the Regulation and an evaluation of the Regulation, a continuous evaluation of the effectiveness and efficiency of the measures implemented, as well as costs linked to maintaining, developing, hosting, operating and supporting a central information system. A detailed overview of the costs involved is provided in the “financial statement” linked to this initiative.

5. OTHER ELEMENTS

• **Implementation plans and monitoring, evaluation and reporting arrangements**

Given the dynamic nature of the platform economy, the monitoring and evaluation of the initiative constitutes an important part of the proposal. It also responds to explicit demands by stakeholders, including Member States, for a dedicated monitoring function, and reflects the importance given to a self-standing monitoring policy option considered in the Inception Impact Assessment. The monitoring therefore will be divided into two parts: (i) continuous monitoring, which will report on the latest developments in the market every second year, potentially involving the EU Observatory of the Online Platform Economy, and (ii) operational objectives and specific indicators to measure them.

Regular and continuous monitoring will cover the following main aspects: (i) monitoring on scope-related issues (e.g. criteria for the designation of gatekeepers, evolution of the designation of gatekeepers, use of the qualitative assessment in the designation process); (ii) monitoring of unfair practices (compliance, enforcement patterns, evolution); and (iii) monitoring as a trigger for the launch of a market investigation with the purpose of examining new core platform services and practices in the digital sector.

The monitoring will also take due account of the conceptual work of the Expert Group of the Online Platform Economy under its work stream on Measurement and Economic Indicators.²²

The effectiveness and efficiency of the proposal will in addition be monitored using pre-defined indicators to establish whether additional rules, including regarding enforcement, may be required to ensure that digital markets across the EU are contestable and fair. Consequently, the impact of the intervention will be assessed in the context of an evaluation exercise and activate, if so required, a review clause, which will allow the Commission to take appropriate measures, including legislative proposals.

Member States will also provide any relevant information they have that the Commission may require for the evaluation purposes.

• **Detailed explanation of the specific provisions of the proposal**

Chapter I sets out the general provisions, including the subject matter, aim and scope of the Regulation, including its harmonising effect in relation to certain national laws (Article 1), and the definitions of the terms used in, as well as the objectives of the proposal (Article 2).

²² https://platformobservatory.eu/app/uploads/2020/07/ProgressReport_Workstream_on_Measurement_and_Economic_Indicators_2020.pdf.

Chapter II contains the provisions concerning the designation of gatekeepers. More specifically, it establishes the conditions under which providers of core platform services should be designated as gatekeepers either based on the quantitative criteria (through a presumption subject to counter-demonstration) or following a case-by-case assessment during a market investigation (Article 3). Furthermore, it also establishes conditions under which a designation of a gatekeeper may be reconsidered and an obligation to regularly review such a designation (Article 4).

Chapter III sets out the practices of gatekeepers that limit contestability and that are unfair. In particular, it lays down self-executing obligations (Article 5) and obligations that are susceptible to specification (Article 6) that the designated gatekeepers should comply with in respect of each of their core platform services listed in the relevant designation decision. In addition, it establishes a framework for a possible dialogue between the designated gatekeeper and the Commission in relation to measures that the gatekeeper implements or intends to implement in order to comply with the obligations set out in Article 6 (Article 7). It also lays down conditions under which the obligations for an individual core platform service may be suspended in exceptional circumstances (Article 8) or an exemption can be granted on grounds of public interest (Article 9). Additional provisions in this Chapter establish a mechanism for updating the list of obligations (Article 10); a clarification that the obligations laid down in the Regulation apply regardless of whether the relevant practice of the designated gatekeeper is of a contractual, commercial, technical or any other nature (Article 11); an obligation to notify any intended concentration within the meaning of the EU Merger Regulation (Article 12); and an obligation on the designated gatekeeper to submit any techniques for profiling of consumers that the gatekeeper applies to or across its core platform services to an independent audit (Article 13).

Chapter IV provides rules for carrying out market investigations, notably procedural requirements for the opening of a market investigation (Article 14) and rules for carrying out different types of market investigations: (i) designation of a gatekeeper (Article 15), (ii) investigation of systematic non-compliance (Article 16) and (iii) investigation of new core platform services and new practices (Article 17).

Chapter V contains the provisions concerning the implementation and enforcement of this Regulation. It provides for procedural requirements for the opening of proceedings (Article 18). It then establishes rules in relation to different tools that can be used in the context of the market investigations or procedures under the Regulation. These include the ability of the Commission to request information (Article 19), conduct interviews and take statements (Article 20) and on-site inspections (Article 21), adopt interim measures (Article 22) and make voluntary measures binding on the gatekeepers (Article 23), as well as monitor their compliance with the Regulation (Article 24).

In case of non-compliance, the Commission can issue non-compliance decisions (Article 25), as well as impose fines (Article 26) and periodic penalty payments (Article 27) for breaches of the Regulation by gatekeepers, as well as for the supply of incorrect, incomplete or misleading information in the context of the investigation. The Regulation sets also a limitation period for the imposition of penalties and for their enforcement (Articles 28 and 29).

Several provisions in this Chapter set the procedural guarantees before the Commission, in particular the right to be heard and of access to the file (Article 30) and the protection of professional secrecy (Article 31). It also provides for the consultation of the Digital Markets

Advisory Committee set up by this Regulation before adopting identified individual decisions addressed to gatekeepers (Article 32). Finally, the Regulation provides for a possibility for three or more Member States to request the Commission to open a market investigation pursuant to Article 15 (Article 33).

Chapter VI contains further general provisions, such as an obligation to publish an identified set of individual decisions adopted under the Regulation (Article 34), a clarification that the Court of Justice of the European Union shall have unlimited jurisdiction in respect of fines and penalty payments (Article 35), and the possibility to adopt implementing (Article 36) and delegated (Article 37) acts.

Finally, the remaining provisions in this Chapter are the review clause (Article 38) and the specification of the entry into force and dates of application of the Regulation (Article 39).

2020/0374 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on contestable and fair markets in the digital sector (Digital Markets Act)

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee²³,

Having regard to the opinion of the Committee of the Regions²⁴,

Having regard to the opinion of the European Data Protection Supervisor²⁵,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Digital services in general and online platforms in particular play an increasingly important role in the economy, in particular in the internal market, by providing new business opportunities in the Union and facilitating cross-border trading.
- (2) Core platform services, at the same time, feature a number of characteristics that can be exploited by their providers. These characteristics of core platform services include among others extreme scale economies, which often result from nearly zero marginal costs to add business users or end users. Other characteristics of core platform services

²³ OJ C , , p. .

²⁴ OJ C , , p. .

²⁵ OJ C , , p. .

are very strong network effects, an ability to connect many business users with many end users through the multi-sidedness of these services, a significant degree of dependence of both business users and end users, lock-in effects, a lack of multi-homing for the same purpose by end users, vertical integration, and data driven-advantages. All these characteristics combined with unfair conduct by providers of these services can have the effect of substantially undermining the contestability of the core platform services, as well as impacting the fairness of the commercial relationship between providers of such services and their business users and end users, leading to rapid and potentially far-reaching decreases in business users' and end users' choice in practice, and therefore can confer to the provider of those services the position of a so-called gatekeeper.

- (3) A small number of large providers of core platform services have emerged with considerable economic power. Typically, they feature an ability to connect many business users with many end users through their services which, in turn, allows them to leverage their advantages, such as their access to large amounts of data, from one area of their activity to new ones. Some of these providers exercise control over whole platform ecosystems in the digital economy and are structurally extremely difficult to challenge or contest by existing or new market operators, irrespective of how innovative and efficient these may be. Contestability is particularly reduced due to the existence of very high barriers to entry or exit, including high investment costs, which cannot, or not easily, be recuperated in case of exit, and absence of (or reduced access to) some key inputs in the digital economy, such as data. As a result, the likelihood increases that the underlying markets do not function well – or will soon fail to function well.
- (4) The combination of those features of gatekeepers is likely to lead in many cases to serious imbalances in bargaining power and, consequently, to unfair practices and conditions for business users as well as end users of core platform services provided by gatekeepers, to the detriment of prices, quality, choice and innovation therein.
- (5) It follows that the market processes are often incapable of ensuring fair economic outcomes with regard to core platform services. Whereas Articles 101 and 102 TFEU remain applicable to the conduct of gatekeepers, their scope is limited to certain instances of market power (e.g. dominance on specific markets) and of anti-competitive behaviour, while enforcement occurs ex post and requires an extensive investigation of often very complex facts on a case by case basis. Moreover, existing Union law does not address, or does not address effectively, the identified challenges to the well-functioning of the internal market posed by the conduct of gatekeepers, which are not necessarily dominant in competition-law terms.
- (6) Gatekeepers have a significant impact on the internal market, providing gateways for a large number of business users, to reach end users, everywhere in the Union and on different markets. The adverse impact of unfair practices on the internal market and particularly weak contestability of core platform services, including their negative societal and economic implications, have led national legislators and sectoral regulators to act. A number of national regulatory solutions have already been adopted or proposed to address unfair practices and the contestability of digital services or at least with regard to some of them. This has created a risk of divergent regulatory solutions and thereby fragmentation of the internal market, thus raising the risk of increased compliance costs due to different sets of national regulatory requirements.

- (7) Therefore, business users and end-users of core platform services provided by gatekeepers should be afforded appropriate regulatory safeguards throughout the Union against the unfair behaviour of gatekeepers in order to facilitate cross-border business within the Union and thereby improve the proper functioning of the internal market and to address existing or likely emerging fragmentation in the specific areas covered by this Regulation. Moreover, while gatekeepers tend to adopt global or at least pan-European business models and algorithmic structures, they can adopt, and in some cases have adopted, different business conditions and practices in different Member States, which is liable to create disparities between the competitive conditions for the users of core platform services provided by gatekeepers, to the detriment of integration within the internal market.
- (8) By approximating diverging national laws, obstacles to the freedom to provide and receive services, including retail services, within the internal market should be eliminated. A targeted set of harmonised mandatory rules should therefore be established at Union level to ensure contestable and fair digital markets featuring the presence of gatekeepers within the internal market.
- (9) A fragmentation of the internal market can only be effectively averted if Member States are prevented from applying national rules which are specific to the types of undertakings and services covered by this Regulation. At the same time, since this Regulation aims at complementing the enforcement of competition law, it should be specified that this Regulation is without prejudice to Articles 101 and 102 TFEU, to the corresponding national competition rules and to other national competition rules regarding unilateral behaviour that are based on an individualised assessment of market positions and behaviour, including its likely effects and the precise scope of the prohibited behaviour, and which provide for the possibility of undertakings to make efficiency and objective justification arguments for the behaviour in question. However, the application of the latter rules should not affect the obligations imposed on gatekeepers under this Regulation and their uniform and effective application in the internal market.
- (10) Articles 101 and 102 TFEU and the corresponding national competition rules concerning anticompetitive multilateral and unilateral conduct as well as merger control have as their objective the protection of undistorted competition on the market. This Regulation pursues an objective that is complementary to, but different from that of protecting undistorted competition on any given market, as defined in competition-law terms, which is to ensure that markets where gatekeepers are present are and remain contestable and fair, independently from the actual, likely or presumed effects of the conduct of a given gatekeeper covered by this Regulation on competition on a given market. This Regulation therefore aims at protecting a different legal interest from those rules and should be without prejudice to their application.
- (11) This Regulation should also complement, without prejudice to their application, the rules resulting from other acts of Union law regulating certain aspects of the provision of services covered by this Regulation, in particular Regulation (EU) 2019/1150 of the European Parliament and of the Council²⁶, Regulation (EU) xx/xx/EU [DSA] of the

²⁶ Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services (OJ L 186, 11.7.2019, p. 57).

European Parliament and of the Council²⁷, Regulation (EU) 2016/679 of the European Parliament and of the Council²⁸, Directive (EU) 2019/790 of the European Parliament and of the Council²⁹, Directive (EU) 2015/2366 of the European Parliament and of the Council³⁰, and Directive (EU) 2010/13 of the European Parliament and of the Council³¹, as well as national rules aimed at enforcing or, as the case may be, implementing that Union legislation.

- (12) Weak contestability and unfair practices in the digital sector are more frequent and pronounced for certain digital services than for others. This is the case in particular for widespread and commonly used digital services that mostly directly intermediate between business users and end users and where features such as extreme scale economies, very strong network effects, an ability to connect many business users with many end users through the multi-sidedness of these services, lock-in effects, a lack of multi-homing or vertical integration are the most prevalent. Often, there is only one or very few large providers of those digital services. These providers of core platform services have emerged most frequently as gatekeepers for business users and end users with far-reaching impacts, gaining the ability to easily set commercial conditions and terms in a unilateral and detrimental manner for their business users and end users. Accordingly, it is necessary to focus only on those digital services that are most broadly used by business users and end users and where, based on current market conditions, concerns about weak contestability and unfair practices by gatekeepers are more apparent and pressing from an internal market perspective.
- (13) In particular, online intermediation services, online search engines, operating systems, online social networking, video sharing platform services, number-independent interpersonal communication services, cloud computing services and online advertising services all have the capacity to affect a large number of end users and businesses alike, which entails a risk of unfair business practices. They therefore should be included in the definition of core platform services and fall into the scope of this Regulation. Online intermediation services may also be active in the field of financial services, and they may intermediate or be used to provide such services as listed non-exhaustively in Annex II to Directive (EU) 2015/1535 of the European Parliament and of the Council³². In certain circumstances, the notion of end users

²⁷ 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.

²⁸ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

²⁹ Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/ (OJ L 130, 17.5.2019, p. 92.).

³⁰ Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (OJ L 337, 23.12.2015, p. 35).

³¹ 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).

³² Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services, OJ L 241, 17.9.2015, p. 1.

should encompass users that are traditionally considered business users, but in a given situation do not use the core platform services to provide goods or services to other end users, such as for example businesses relying on cloud computing services for their own purposes.

- (14) A number of other ancillary services, such as identification or payment services and technical services which support the provision of payment services, may be provided by gatekeepers together with their core platform services. As gatekeepers frequently provide the portfolio of their services as part of an integrated ecosystem to which third-party providers of such ancillary services do not have access, at least not subject to equal conditions, and can link the access to the core platform service to take-up of one or more ancillary services, the gatekeepers are likely to have an increased ability and incentive to leverage their gatekeeper power from their core platform services to these ancillary services, to the detriment of choice and contestability of these services.
- (15) The fact that a digital service qualifies as a core platform service in light of its widespread and common use and its importance for connecting business users and end users does not as such give rise to sufficiently serious concerns of contestability and unfair practices. It is only when a core platform service constitutes an important gateway and is operated by a provider with a significant impact in the internal market and an entrenched and durable position, or by a provider that will foreseeably have such a position in the near future, that such concerns arise. Accordingly, the targeted set of harmonised rules laid down in this Regulation should apply only to undertakings designated on the basis of these three objective criteria, and they should only apply to those of their core platform services that individually constitute an important gateway for business users to reach end users.
- (16) In order to ensure the effective application of this Regulation to providers of core platform services which are most likely to satisfy these objective requirements, and where unfair conduct weakening contestability is most prevalent and impactful, the Commission should be able to directly designate as gatekeepers those providers of core platform services which meet certain quantitative thresholds. Such undertakings should in any event be subject to a fast designation process which should start upon the entry into force of this Regulation.
- (17) A very significant turnover in the Union and the provision of a core platform service in at least three Member States constitute compelling indications that the provider of a core platform service has a significant impact on the internal market. This is equally true where a provider of a core platform service in at least three Member States has a very significant market capitalisation or equivalent fair market value. Therefore, a provider of a core platform service should be presumed to have a significant impact on the internal market where it provides a core platform service in at least three Member States and where either its group turnover realised in the EEA is equal to or exceeds a specific, high threshold or the market capitalisation of the group is equal to or exceeds a certain high absolute value. For providers of core platform services that belong to undertakings that are not publicly listed, the equivalent fair market value above a certain high absolute value should be referred to. The Commission should use its power to adopt delegated acts to develop an objective methodology to calculate that value. A high EEA group turnover in conjunction with the threshold of users in the Union of core platform services reflects a relatively strong ability to monetise these users. A high market capitalisation relative to the same threshold number of users in the Union reflects a relatively significant potential to monetise these users in the near future. This monetisation potential in turn reflects in principle the gateway position of

the undertakings concerned. Both indicators are in addition reflective of their financial capacity, including their ability to leverage their access to financial markets to reinforce their position. This may for example happen where this superior access is used to acquire other undertakings, which ability has in turn been shown to have potential negative effects on innovation. Market capitalisation can also be reflective of the expected future position and effect on the internal market of the providers concerned, notwithstanding a potentially relatively low current turnover. The market capitalisation value can be based on a level that reflects the average market capitalisation of the largest publicly listed undertakings in the Union over an appropriate period.

- (18) A sustained market capitalisation of the provider of core platform services at or above the threshold level over three or more years should be considered as strengthening the presumption that the provider of core platform services has a significant impact on the internal market.
- (19) There may be a number of factors concerning market capitalisation that would require an in-depth assessment in determining whether a provider of core platform services should be deemed to have a significant impact on the internal market. This may be the case where the market capitalisation of the provider of core platform services in preceding financial years was significantly lower than the average of the equity market, the volatility of its market capitalisation over the observed period was disproportionate to overall equity market volatility or its market capitalisation trajectory relative to market trends was inconsistent with a rapid and unidirectional growth.
- (20) A very high number of business users that depend on a core platform service to reach a very high number of monthly active end users allow the provider of that service to influence the operations of a substantial part of business users to its advantage and indicate in principle that the provider serves as an important gateway. The respective relevant levels for those numbers should be set representing a substantive percentage of the entire population of the Union when it comes to end users and of the entire population of businesses using platforms to determine the threshold for business users.
- (21) An entrenched and durable position in its operations or the foreseeability of achieving such a position future occurs notably where the contestability of the position of the provider of the core platform service is limited. This is likely to be the case where that provider has provided a core platform service in at least three Member States to a very high number of business users and end users during at least three years.
- (22) Such thresholds can be impacted by market and technical developments. The Commission should therefore be empowered to adopt delegated acts to specify the methodology for determining whether the quantitative thresholds are met, and to regularly adjust it to market and technological developments where necessary. This is particularly relevant in relation to the threshold referring to market capitalisation, which should be indexed in appropriate intervals.
- (23) Providers of core platform services which meet the quantitative thresholds but are able to present sufficiently substantiated arguments to demonstrate that, in the circumstances in which the relevant core platform service operates, they do not fulfil the objective requirements for a gatekeeper, should not be designated directly, but only subject to a further investigation. The burden of adducing evidence that the presumption deriving from the fulfilment of quantitative thresholds should not apply to a specific provider should be borne by that provider. In its assessment, the

Commission should take into account only the elements which directly relate to the requirements for constituting a gatekeeper, namely whether it is an important gateway which is operated by a provider with a significant impact in the internal market with an entrenched and durable position, either actual or foreseeable. Any justification on economic grounds seeking to demonstrate efficiencies deriving from a specific type of behaviour by the provider of core platform services should be discarded, as it is not relevant to the designation as a gatekeeper. The Commission should be able to take a decision by relying on the quantitative thresholds where the provider significantly obstructs the investigation by failing to comply with the investigative measures taken by the Commission.

- (24) Provision should also be made for the assessment of the gatekeeper role of providers of core platform services which do not satisfy all of the quantitative thresholds, in light of the overall objective requirements that they have a significant impact on the internal market, act as an important gateway for business users to reach end users and benefit from a durable and entrenched position in their operations or it is foreseeable that it will do so in the near future.
- (25) Such an assessment can only be done in light of a market investigation, while taking into account the quantitative thresholds. In its assessment the Commission should pursue the objectives of preserving and fostering the level of innovation, the quality of digital products and services, the degree to which prices are fair and competitive, and the degree to which quality or choice for business users and for end users is or remains high. Elements that are specific to the providers of core platform services concerned, such as extreme scale economies, very strong network effects, an ability to connect many business users with many end users through the multi-sidedness of these services, lock-in effects, a lack of multi-homing or vertical integration, can be taken into account. In addition, a very high market capitalisation, a very high ratio of equity value over profit or a very high turnover derived from end users of a single core platform service can point to the tipping of the market or leveraging potential of such providers. Together with market capitalisation, high growth rates, or decelerating growth rates read together with profitability growth, are examples of dynamic parameters that are particularly relevant to identifying such providers of core platform services that are foreseen to become entrenched. The Commission should be able to take a decision by drawing adverse inferences from facts available where the provider significantly obstructs the investigation by failing to comply with the investigative measures taken by the Commission.
- (26) A particular subset of rules should apply to those providers of core platform services that are foreseen to enjoy an entrenched and durable position in the near future. The same specific features of core platform services make them prone to tipping: once a service provider has obtained a certain advantage over rivals or potential challengers in terms of scale or intermediation power, its position may become unassailable and the situation may evolve to the point that it is likely to become durable and entrenched in the near future. Undertakings can try to induce this tipping and emerge as gatekeeper by using some of the unfair conditions and practices regulated in this Regulation. In such a situation, it appears appropriate to intervene before the market tips irreversibly.
- (27) However, such an early intervention should be limited to imposing only those obligations that are necessary and appropriate to ensure that the services in question remain contestable and allow to avoid the qualified risk of unfair conditions and practices. Obligations that prevent the provider of core platform services concerned

from achieving an entrenched and durable position in its operations, such as those preventing unfair leveraging, and those that facilitate switching and multi-homing are more directly geared towards this purpose. To ensure proportionality, the Commission should moreover apply from that subset of obligations only those that are necessary and proportionate to achieve the objectives of this Regulation and should regularly review whether such obligations should be maintained, suppressed or adapted.

- (28) This should allow the Commission to intervene in time and effectively, while fully respecting the proportionality of the considered measures. It should also reassure actual or potential market participants about the fairness and contestability of the services concerned.
- (29) Designated gatekeepers should comply with the obligations laid down in this Regulation in respect of each of the core platform services listed in the relevant designation decision. The mandatory rules should apply taking into account the conglomerate position of gatekeepers, where applicable. Furthermore, implementing measures that the Commission may by decision impose on the gatekeeper following a regulatory dialogue should be designed in an effective manner, having regard to the features of core platform services as well as possible circumvention risks and in compliance with the principle of proportionality and the fundamental rights of the undertakings concerned as well as those of third parties.
- (30) The very rapidly changing and complex technological nature of core platform services requires a regular review of the status of gatekeepers, including those that are foreseen to enjoy a durable and entrenched position in their operations in the near future. To provide all of the market participants, including the gatekeepers, with the required certainty as to the applicable legal obligations, a time limit for such regular reviews is necessary. It is also important to conduct such reviews on a regular basis and at least every two years.
- (31) To ensure the effectiveness of the review of gatekeeper status as well as the possibility to adjust the list of core platform services provided by a gatekeeper, the gatekeepers should inform the Commission of all of their intended and concluded acquisitions of other providers of core platform services or any other services provided within the digital sector. Such information should not only serve the review process mentioned above, regarding the status of individual gatekeepers, but will also provide information that is crucial to monitoring broader contestability trends in the digital sector and can therefore be a useful factor for consideration in the context of the market investigations foreseen by this Regulation.
- (32) To safeguard the fairness and contestability of core platform services provided by gatekeepers, it is necessary to provide in a clear and unambiguous manner for a set of harmonised obligations with regard to those services. Such rules are needed to address the risk of harmful effects of unfair practices imposed by gatekeepers, to the benefit of the business environment in the services concerned, to the benefit of users and ultimately to the benefit of society as a whole. Given the fast-moving and dynamic nature of digital markets, and the substantial economic power of gatekeepers, it is important that these obligations are effectively applied without being circumvented. To that end, the obligations in question should apply to any practices by a gatekeeper, irrespective of its form and irrespective of whether it is of a contractual, commercial, technical or any other nature, insofar as a practice corresponds to the type of practice that is the subject of one of the obligations of this Regulation.

- (33) The obligations laid down in this Regulation are limited to what is necessary and justified to address the unfairness of the identified practices by gatekeepers and to ensure contestability in relation to core platform services provided by gatekeepers. Therefore, the obligations should correspond to those practices that are considered unfair by taking into account the features of the digital sector and where experience gained, for example in the enforcement of the EU competition rules, shows that they have a particularly negative direct impact on the business users and end users. In addition, it is necessary to provide for the possibility of a regulatory dialogue with gatekeepers to tailor those obligations that are likely to require specific implementing measures in order to ensure their effectiveness and proportionality. The obligations should only be updated after a thorough investigation on the nature and impact of specific practices that may be newly identified, following an in-depth investigation, as unfair or limiting contestability in the same manner as the unfair practices laid down in this Regulation while potentially escaping the scope of the current set of obligations.
- (34) The combination of these different mechanisms for imposing and adapting obligations should ensure that the obligations do not extend beyond observed unfair practices, while at the same time ensuring that new or evolving practices can be the subject of intervention where necessary and justified.
- (35) The obligations laid down in this Regulation are necessary to address identified public policy concerns, there being no alternative and less restrictive measures that would effectively achieve the same result, having regard to need to safeguard public order, protect privacy and fight fraudulent and deceptive commercial practices.
- (36) The conduct of combining end user data from different sources or signing in users to different services of gatekeepers gives them potential advantages in terms of accumulation of data, thereby raising barriers to entry. To ensure that gatekeepers do not unfairly undermine the contestability of core platform services, they should enable their end users to freely choose to opt-in to such business practices by offering a less personalised alternative. The possibility should cover all possible sources of personal data, including own services of the gatekeeper as well as third party websites, and should be proactively presented to the end user in an explicit, clear and straightforward manner.
- (37) Because of their position, gatekeepers might in certain cases restrict the ability of business users of their online intermediation services to offer their goods or services to end users under more favourable conditions, including price, through other online intermediation services. Such restrictions have a significant deterrent effect on the business users of gatekeepers in terms of their use of alternative online intermediation services, limiting inter-platform contestability, which in turn limits choice of alternative online intermediation channels for end users. To ensure that business users of online intermediation services of gatekeepers can freely choose alternative online intermediation services and differentiate the conditions under which they offer their products or services to their end users, it should not be accepted that gatekeepers limit business users from choosing to differentiate commercial conditions, including price. Such a restriction should apply to any measure with equivalent effect, such as for example increased commission rates or de-listing of the offers of business users.
- (38) To prevent further reinforcing their dependence on the core platform services of gatekeepers, the business users of these gatekeepers should be free in promoting and choosing the distribution channel they consider most appropriate to interact with any end users that these business users have already acquired through core platform

services provided by the gatekeeper. Conversely, end users should also be free to choose offers of such business users and to enter into contracts with them either through core platform services of the gatekeeper, if applicable, or from a direct distribution channel of the business user or another indirect distribution channel such business user may use. This should apply to the promotion of offers and conclusion of contracts between business users and end users. Moreover, the ability of end users to freely acquire content, subscriptions, features or other items outside the core platform services of the gatekeeper should not be undermined or restricted. In particular, it should be avoided that gatekeepers restrict end users from access to and use of such services via a software application running on their core platform service. For example, subscribers to online content purchased outside a software application download or purchased from a software application store should not be prevented from accessing such online content on a software application on the gatekeeper's core platform service simply because it was purchased outside such software application or software application store.

- (39) To safeguard a fair commercial environment and protect the contestability of the digital sector it is important to safeguard the right of business users to raise concerns about unfair behaviour by gatekeepers with any relevant administrative or other public authorities. For example, business users may want to complain about different types of unfair practices, such as discriminatory access conditions, unjustified closing of business user accounts or unclear grounds for product de-listings. Any practice that would in any way inhibit such a possibility of raising concerns or seeking available redress, for instance by means of confidentiality clauses in agreements or other written terms, should therefore be prohibited. This should be 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 complaints-handling mechanisms, including any use of alternative dispute resolution mechanisms or of the jurisdiction of specific courts in compliance with respective Union and national law. This should therefore also be without prejudice to the role gatekeepers play in the fight against illegal content online.
- (40) Identification services are crucial for business users to conduct their business, as these can allow them not only to optimise services, to the extent allowed under Regulation (EU) 2016/679 and Directive 2002/58/EC of the European Parliament and of the Council³³, but also to inject trust in online transactions, in compliance with Union or national law. Gatekeepers should therefore not use their position as provider of core platform services to require their dependent business users to include any identification services provided by the gatekeeper itself as part of the provision of services or products by these business users to their end users, where other identification services are available to such business users.
- (41) Gatekeepers should not restrict the free choice of end users by technically preventing switching between or subscription to different software applications and services. Gatekeepers should therefore ensure a free choice irrespective of whether they are the manufacturer of any hardware by means of which such software applications or services are accessed and should not raise artificial technical barriers so as to make switching impossible or ineffective. The mere offering of a given product or service to

³³ Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ L 201, 31.7.2002, p. 37).

end users, including by means of pre-installation, as well the improvement of end user offering, such as better prices or increased quality, would not in itself constitute a barrier to switching.

- (42) The conditions under which gatekeepers provide online advertising services to business users including both advertisers and publishers are often non-transparent and opaque. This opacity is partly linked to the practices of a few platforms, but is also due to the sheer complexity of modern day programmatic advertising. The sector is considered to have become more non-transparent after the introduction of new privacy legislation, and is expected to become even more opaque with the announced removal of third-party cookies. This often leads to a lack of information and knowledge for advertisers and publishers about the conditions of the advertising services they purchased and undermines their ability to switch to alternative providers of online advertising services. Furthermore, the costs of online advertising are likely to be higher than they would be in a fairer, more transparent and contestable platform environment. These higher costs are likely to be reflected in the prices that end users pay for many daily products and services relying on the use of online advertising. Transparency obligations should therefore require gatekeepers to provide advertisers and publishers to whom they supply online advertising services, when requested and to the extent possible, with information that allows both sides to understand the price paid for each of the different advertising services provided as part of the relevant advertising value chain.
- (43) A gatekeeper may in certain circumstances have a dual role as a provider of core platform services whereby it provides a core platform service to its business users, while also competing with those same business users in the provision of the same or similar services or products to the same end users. In these circumstances, a gatekeeper may take advantage of its dual role to use data, generated from transactions by its business users on the core platform, for the purpose of its own services that offer similar services to that of its business users. This may be the case, for instance, where a gatekeeper provides an online marketplace or app store to business users, and at the same time offer services as an online retailer or provider of application software against those business users. To prevent gatekeepers from unfairly benefitting from their dual role, it should be ensured that they refrain from using any aggregated or non-aggregated data, which may include anonymised and personal data that is not publicly available to offer similar services to those of their business users. This obligation should apply to the gatekeeper as a whole, including but not limited to its business unit that competes with the business users of a core platform service.
- (44) Business users may also purchase advertising services from a provider of core platform services for the purpose of providing goods and services to end users. In this case, it may occur that the data are not generated on the core platform service, but are provided to the core platform service by the business user or are generated based on its operations through the core platform service concerned. In certain instances, that core platform service providing advertising may have a dual role, as intermediary and as provider of advertising services. Accordingly, the obligation prohibiting a dual role gatekeeper from using data of business users should apply also with respect to the data that a core platform service has received from businesses for the purpose of providing advertising services related to that core platform service.
- (45) In relation to cloud computing services, this obligation should extend to data provided or generated by business users of the gatekeeper in the context of their use of the cloud computing service of the gatekeeper, or through its software application store that

allows end users of cloud computing services access to software applications. This obligation should not affect the right of gatekeepers to use aggregated data for providing ancillary data analytics services, subject to compliance with Regulation 2016/679 and Directive 2002/58/EC as well as with the relevant obligations in this Regulation concerning ancillary services.

- (46) A gatekeeper may use different means to favour its own services or products on its core platform service, to the detriment of the same or similar services that end users could obtain through third parties. This may for instance be the case where certain software applications or services are pre-installed by a gatekeeper. To enable end user choice, gatekeepers should not prevent end users from un-installing any pre-installed software applications on its core platform service and thereby favour their own software applications.
- (47) The rules that the gatekeepers set for the distribution of software applications may in certain circumstances restrict the ability of end users to install and effectively use third party software applications or software application stores on operating systems or hardware of the relevant gatekeeper and restrict the ability of end users to access these software applications or software application stores outside the core platform services of that gatekeeper. Such restrictions may limit the ability of developers of software applications to use alternative distribution channels and the ability of end users to choose between different software applications from different distribution channels and should be prohibited as unfair and liable to weaken the contestability of core platform services. In order 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 the gatekeeper concerned may implement proportionate technical or contractual measures to achieve that goal if the gatekeeper demonstrates that such measures are necessary and justified and that there are no less restrictive means to safeguard the integrity of the hardware or operating system.
- (48) Gatekeepers are often vertically integrated and offer certain products or services to end users through their own core platform services, or through a business user over which they exercise control which frequently leads to conflicts of interest. This can include the situation whereby a gatekeeper offers its own online intermediation services through an online search engine. When offering those products or services on the core platform service, gatekeepers can reserve a better position to their own offering, in terms of ranking, as opposed to the products of third parties also operating on that core platform service. This can occur for instance with products or services, including other core platform services, which are ranked in the results communicated by online search engines, or which are partly or entirely embedded in online search engines results, groups of results specialised in a certain topic, displayed along with the results of an online search engine, which are considered or used by certain end users as a service distinct or additional to the online search engine. Other instances are those of software applications which are distributed through software application stores, or products or services that are given prominence and display in the newsfeed of a social network, or products or services ranked in search results or displayed on an online marketplace. In those circumstances, the gatekeeper is in a dual-role position as intermediary for third party providers and as direct provider of products or services of the gatekeeper. Consequently, these gatekeepers have the ability to undermine directly the contestability for those products or services on these core platform services, to the detriment of business users which are not controlled by the gatekeeper.

- (49) In such situations, the gatekeeper should not engage in any form of differentiated or preferential treatment in ranking on the core platform service, whether through legal, commercial or technical means, in favour of products or services it offers itself or through a business user which it controls. To ensure that this obligation is effective, it should also be ensured that the conditions that apply to such ranking are also generally fair. Ranking should in this context cover all forms of relative prominence, including display, rating, linking or voice results. To ensure that this obligation is effective and cannot be circumvented it should also apply to any measure that may have an equivalent effect to the differentiated or preferential treatment in ranking. The guidelines adopted pursuant to Article 5 of Regulation (EU) 2019/1150 should also facilitate the implementation and enforcement of this obligation.³⁴
- (50) Gatekeepers should not restrict or prevent the free choice of end users by technically preventing switching between or subscription to different software applications and services. This would allow more providers to offer their services, thereby ultimately providing greater choice to the end user. Gatekeepers should ensure a free choice irrespective of whether they are the manufacturer of any hardware by means of which such software applications or services are accessed and shall not raise artificial technical barriers so as to make switching impossible or ineffective. The mere offering of a given product or service to consumers, including by means of pre-installation, as well as the improvement of the offering to end users, such as price reductions or increased quality, should not be construed as constituting a prohibited barrier to switching.
- (51) Gatekeepers can hamper the ability of end users to access online content and services including software applications. Therefore, rules should be established to ensure that the rights of end users to access an open internet are not compromised by the conduct of gatekeepers. Gatekeepers can also technically limit the ability of end users to effectively switch between different Internet access service providers, in particular through their control over operating systems or hardware. This distorts the level playing field for Internet access services and ultimately harms end users. It should therefore be ensured that gatekeepers do not unduly restrict end users in choosing their Internet access service provider.
- (52) Gatekeepers may also have a dual role as developers of operating systems and device manufacturers, including any technical functionality that such a device may have. For example, a gatekeeper that is a manufacturer of a device may restrict access to some of the functionalities in this device, such as near-field-communication technology and the software used to operate that technology, which may be required for the effective provision of an ancillary service by the gatekeeper as well as by any potential third party provider of such an ancillary service. Such access may equally be required by software applications related to the relevant ancillary services in order to effectively provide similar functionalities as those offered by gatekeepers. If such a dual role is used in a manner that prevents alternative providers of ancillary services or of software applications to have access under equal conditions to the same operating system, hardware or software features that are available or used in the provision by the gatekeeper of any ancillary services, this could significantly undermine innovation by providers of such ancillary services as well as choice for end users of such ancillary services. The gatekeepers should therefore be obliged to ensure access under equal

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Commission Notice: Guidelines on ranking transparency pursuant to Regulation (EU) 2019/1150 of the European Parliament and of the Council (OJ C 424, 8.12.2020, p. 1).

conditions to, and interoperability with, the same operating system, hardware or software features that are available or used in the provision of any ancillary services by the gatekeeper.

- (53) The conditions under which gatekeepers provide online advertising services to business users including both advertisers and publishers are often non-transparent and opaque. This often leads to a lack of information for advertisers and publishers about the effect of a given ad. To further enhance fairness, transparency and contestability of online advertising services designated under this Regulation as well as those that are fully integrated with other core platform services of the same provider, the designated gatekeepers should therefore provide advertisers and publishers, when requested, with free of charge access to the performance measuring tools of the gatekeeper and the information necessary for advertisers, advertising agencies acting on behalf of a company placing advertising, as well as for publishers to carry out their own independent verification of the provision of the relevant online advertising services.
- (54) Gatekeepers benefit from access to vast amounts of data that they collect while providing the core platform services as well as other digital services. To ensure that gatekeepers do not undermine the contestability of core platform services as well as the innovation potential of the dynamic digital sector by restricting the ability of business users to effectively port their data, business users and end users should be granted effective and immediate access to the data they provided or generated in the context of their use of the relevant core platform services of the gatekeeper, in a structured, commonly used and machine-readable format. This should apply also to any other data at different levels of aggregation that may be necessary to effectively enable such portability. It should also be ensured that business users and end users can port that data in real time effectively, such as for example through high quality application programming interfaces. Facilitating switching or multi-homing should lead, in turn, to an increased choice for business users and end users and an incentive for gatekeepers and business users to innovate.
- (55) Business users that use large core platform services provided by gatekeepers and end users of such business users provide and generate a vast amount of data, including data inferred from such use. In order to ensure that business users have access to the relevant data thus generated, the gatekeeper should, upon their request, allow unhindered access, free of charge, to such data. Such access should also be given to third parties contracted by the business user, who are acting as processors of this data for the business user. Data provided or generated by the same business users and the same end users of these business users in the context of other services provided by the same gatekeeper may be concerned where this is inextricably linked to the relevant request. To this end, a gatekeeper should not use any contractual or other restrictions to prevent business users from accessing relevant data and should enable business users to obtain consent of their end users for such data access and retrieval, where such consent is required under Regulation (EU) 2016/679 and Directive 2002/58/EC. Gatekeepers should also facilitate access to these data in real time by means of appropriate technical measures, such as for example putting in place high quality application programming interfaces.
- (56) The value of online search engines to their respective business users and end users increases as the total number of such users increases. Providers of online search engines collect and store aggregated datasets containing information about what users searched for, and how they interacted with, the results that they were served. Providers of online search engine services collect these data from searches undertaken on their

own online search engine service and, where applicable, searches undertaken on the platforms of their downstream commercial partners. Access by gatekeepers to such ranking, query, click and view data constitutes an important barrier to entry and expansion, which undermines the contestability of online search engine services. Gatekeepers should therefore be obliged to provide access, on fair, reasonable and non-discriminatory terms, to these ranking, query, click and view data in relation to free and paid search generated by consumers on online search engine services to other providers of such services, so that these third-party providers can optimise their services and contest the relevant core platform services. Such access should also be given to third parties contracted by a search engine provider, who are acting as processors of this data for that search engine. When providing access to its search data, a gatekeeper should ensure the protection of the personal data of end users by appropriate means, without substantially degrading the quality or usefulness of the data.

- (57) In particular gatekeepers which provide access to software application stores serve as an important gateway for business users that seek to reach end users. In view of the imbalance in bargaining power between those gatekeepers and business users of their software application stores, those gatekeepers should not be allowed to impose general conditions, including pricing conditions, that would be unfair or lead to unjustified differentiation. Pricing or other general access conditions should be considered unfair if they lead to an imbalance of rights and obligations imposed on business users or confer an advantage on the gatekeeper which is disproportionate to the service provided by the gatekeeper to business users or lead to a disadvantage for business users in providing the same or similar services as the gatekeeper. The following benchmarks can serve as a yardstick to determine the fairness of general access conditions: prices charged or conditions imposed for the same or similar services by other providers of software application stores; prices charged or conditions imposed by the provider of the software application store for different related or similar services or to different types of end users; prices charged or conditions imposed by the provider of the software application store for the same service in different geographic regions; prices charged or conditions imposed by the provider of the software application store for the same service the gatekeeper offers to itself. This obligation should not establish an access right and it should be without prejudice to the ability of providers of software application stores to take the required responsibility in the fight against illegal and unwanted content as set out in Regulation [Digital Services Act].
- (58) To ensure the effectiveness of the obligations laid down by this Regulation, while also making certain that these obligations are limited to what is necessary to ensure contestability and tackling the harmful effects of the unfair behaviour by gatekeepers, it is important to clearly define and circumscribe them so as to allow the gatekeeper to immediately comply with them, in full respect of Regulation (EU) 2016/679 and Directive 2002/58/EC, consumer protection, cyber security and product safety. The gatekeepers should ensure the compliance with this Regulation by design. The necessary measures should therefore be as much as possible and where relevant integrated into the technological design used by the gatekeepers. However, it may in certain cases be appropriate for the Commission, following a dialogue with the gatekeeper concerned, to further specify some of the measures that the gatekeeper concerned should adopt in order to effectively comply with those obligations that are susceptible of being further specified. This possibility of a regulatory dialogue should facilitate compliance by gatekeepers and expedite the correct implementation of the Regulation.

- (59) As an additional element to ensure proportionality, gatekeepers should be given an opportunity to request the suspension, to the extent necessary, of a specific obligation in exceptional circumstances that lie beyond the control of the gatekeeper, such as for example an unforeseen external shock that has temporarily eliminated a significant part of end user demand for the relevant core platform service, where compliance with a specific obligation is shown by the gatekeeper to endanger the economic viability of the Union operations of the gatekeeper concerned.
- (60) In exceptional circumstances justified on the limited grounds of public morality, public health or public security, the Commission should be able to decide that the obligation concerned does not apply to a specific core platform service. Affecting these public interests can indicate that the cost to society as a whole of enforcing a certain obligation would in a certain exceptional case be too high and thus disproportionate. The regulatory dialogue to facilitate compliance with limited suspension and exemption possibilities should ensure the proportionality of the obligations in this Regulation without undermining the intended ex ante effects on fairness and contestability.
- (61) The data protection and privacy interests of end users are relevant to any assessment of potential negative effects of the observed practice of gatekeepers to collect and accumulate large amounts of data from end users. Ensuring an adequate level of transparency of profiling practices employed by gatekeepers facilitates contestability of core platform services, by putting external pressure on gatekeepers to prevent making deep consumer profiling the industry standard, given that potential entrants or start-up providers cannot access data to the same extent and depth, and at a similar scale. Enhanced transparency should allow other providers of core platform services to differentiate themselves better through the use of superior privacy guaranteeing facilities. To ensure a minimum level of effectiveness of this transparency obligation, gatekeepers should at least provide a description of the basis upon which profiling is performed, including whether personal data and data derived from user activity is relied on, the processing applied, the purpose for which the profile is prepared and eventually used, the impact of such profiling on the gatekeeper's services, and the steps taken to enable end users to be aware of the relevant use of such profiling, as well as to seek their consent.
- (62) In order to ensure the full and lasting achievement of the objectives of this Regulation, the Commission should be able to assess whether a provider of core platform services should be designated as a gatekeeper without meeting the quantitative thresholds laid down in this Regulation; whether systematic non-compliance by a gatekeeper warrants imposing additional remedies; and whether the list of obligations addressing unfair practices by gatekeepers should be reviewed and additional practices that are similarly unfair and limiting the contestability of digital markets should be identified. Such assessment should be based on market investigations to be run in an appropriate timeframe, by using clear procedures and deadlines, in order to support the ex ante effect of this Regulation on contestability and fairness in the digital sector, and to provide the requisite degree of legal certainty.
- (63) Following a market investigation, an undertaking providing a core platform service could be found to fulfil all of the overarching qualitative criteria for being identified as a gatekeeper. It should then, in principle, comply with all of the relevant obligations laid down by this Regulation. However, for gatekeepers that have been designated by the Commission as likely to enjoy an entrenched and durable position in the near future, the Commission should only impose those obligations that are necessary and

appropriate to prevent that the gatekeeper concerned achieves an entrenched and durable position in its operations. With respect to such emerging gatekeepers, the Commission should take into account that this status is in principle of a temporary nature, and it should therefore be decided at a given moment whether such a provider of core platform services should be subjected to the full set of gatekeeper obligations because it has acquired an entrenched and durable position, or conditions for designation are ultimately not met and therefore all previously imposed obligations should be waived.

- (64) The Commission should investigate and assess whether additional behavioural, or, where appropriate, structural remedies are justified, in order to ensure that the gatekeeper cannot frustrate the objectives of this Regulation by systematic non-compliance with one or several of the obligations laid down in this Regulation, which has further strengthened its gatekeeper position. This would be the case if the gatekeeper's size in the internal market has further increased, economic dependency of business users and end users on the gatekeeper's core platform services has further strengthened as their number has further increased and the gatekeeper benefits from increased entrenchment of its position. The Commission should therefore in such cases have the power to impose any remedy, whether behavioural or structural, having due regard to the principle of proportionality. Structural remedies, such as legal, functional or structural separation, including the divestiture of a business, or parts of it, should only be imposed either where there is no equally effective behavioural remedy or where any equally effective behavioural remedy would be more burdensome for the undertaking concerned than the structural remedy. Changes to the structure of an undertaking as it existed before the systematic non-compliance was established would only be proportionate where there is a substantial risk that this systematic non-compliance results from the very structure of the undertaking concerned.
- (65) The services and practices in core platform services and markets in which these intervene can change quickly and to a significant extent. To ensure that this Regulation remains up to date and constitutes an effective and holistic regulatory response to the problems posed by gatekeepers, it is important to provide for a regular review of the lists of core platform services as well as of the obligations provided for in this Regulation. This is particularly important to ensure that behaviour that may limit the contestability of core platform services or is unfair is identified. While it is important to conduct a review on a regular basis, given the dynamically changing nature of the digital sector, in order to ensure legal certainty as to the regulatory conditions, any reviews should be conducted within a reasonable and appropriate time-frame. Market investigations should also ensure that the Commission has a solid evidentiary basis on which it can assess whether it should propose to amend this Regulation in order to expand, or further detail, the lists of core platform services. They should equally ensure that the Commission has a solid evidentiary basis on which it can assess whether it should propose to amend the obligations laid down in this Regulation or whether it should adopt a delegated act updating such obligations.
- (66) In the event that gatekeepers engage in behaviour that is unfair or that limits the contestability of the core platform services that are already designated under this Regulation but without these behaviours being explicitly covered by the obligations, the Commission should be able to update this Regulation through delegated acts. Such updates by way of delegated act should be subject to the same investigatory standard and therefore following a market investigation. The Commission should also apply a predefined standard in identifying such behaviours. This legal standard should ensure

that the type of obligations that gatekeepers may at any time face under this Regulation are sufficiently predictable.

- (67) Where, in the course of a proceeding into non-compliance or an investigation into systemic non-compliance, a gatekeeper offers commitments to the Commission, the latter should be able to adopt a decision making these commitments binding on the gatekeeper concerned, where it finds that the commitments ensure effective compliance with the obligations of this Regulation. This decision should also find that there are no longer grounds for action by the Commission.
- (68) In order to ensure effective implementation and compliance with this Regulation, the Commission should have strong investigative and enforcement powers, to allow it to investigate, enforce and monitor the rules laid down in this Regulation, while at the same time ensuring the respect for the fundamental right to be heard and to have access to the file in the context of the enforcement proceedings. The Commission should dispose of these investigative powers also for the purpose of carrying out market investigations for the purpose of updating and reviewing this Regulation.
- (69) The Commission should be empowered to request information necessary for the purpose of this Regulation, throughout the Union. In particular, the Commission should have access to any relevant documents, data, database, algorithm and information necessary to open and conduct investigations and to monitor the compliance with the obligations laid down in this Regulation, irrespective of who possesses the documents, data or information in question, and regardless of their form or format, their storage medium, or the place where they are stored.
- (70) The Commission should be able to directly request that undertakings or association of undertakings provide any relevant evidence, data and information. In addition, the Commission should be able to request any relevant information from any public authority, body or agency within the Member State, or from any natural person or legal person for the purpose of this Regulation. When complying with a decision of the Commission, undertakings are obliged to answer factual questions and to provide documents.
- (71) The Commission should also be empowered to undertake onsite inspections and to interview any persons who may be in possession of useful information and to record the statements made.
- (72) The Commission should be able to take the necessary actions to monitor the effective implementation and compliance with the obligations laid down in this Regulation. Such actions should include the ability of the Commission to appoint independent external experts, such as and auditors to assist the Commission in this process, including where applicable from competent independent authorities, such as data or consumer protection authorities.
- (73) Compliance with the obligations imposed under this Regulation should be enforceable by means of fines and periodic penalty payments. To that end, appropriate levels of fines and periodic penalty payments should also be laid down for non-compliance with the obligations and breach of the procedural rules subject to appropriate limitation periods. The Court of Justice should have unlimited jurisdiction in respect of fines and penalty payments.
- (74) In order to ensure effective recovery of fines imposed on associations of undertakings for infringements that they have committed, it is necessary to lay down the conditions

on which the Commission may require payment of the fine from the members of the association where the association is not solvent.

- (75) In the context of proceedings carried out under this Regulation, the undertakings concerned should be accorded the right to be heard by the Commission and the decisions taken should be widely publicised. While ensuring the rights to good administration and the rights of defence of the undertakings concerned, in particular, the right of access to the file and the right to be heard, it is essential that confidential information be protected. Furthermore, while respecting the confidentiality of the information, the Commission should ensure that any information relied on for the purpose of the decision is disclosed to an extent that allows the addressee of the decision to understand the facts and considerations that led up to the decision. Finally, under certain conditions certain business records, such as communication between lawyers and their clients, may be considered confidential if the relevant conditions are met.
- (76) In order to ensure uniform conditions for the implementation of Articles 3, 6, 12, 13, 15, 16, 17, 20, 22, 23, 25 and 30, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council³⁵.
- (77) The advisory committee established in accordance with Regulation (EU) No 182/2011 should also deliver opinions on certain individual decisions of the Commission issued under this Regulation. In order to ensure contestable and fair markets in the digital sector across the Union where gatekeepers are present, the power to adopt acts in accordance with Article 290 of the Treaty should be delegated to the Commission to supplement this Regulation. In particular, delegated acts should be adopted in respect of the methodology for determining the quantitative thresholds for designation of gatekeepers under this Regulation and in respect of the update of the obligations laid down in this Regulation where, based on a market investigation the Commission has identified the need for updating the obligations addressing practices that limit the contestability of core platform services or are unfair. It is of particular importance that the Commission carries out appropriate consultations and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016³⁶. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.
- (78) The Commission should periodically evaluate this Regulation and closely monitor its effects on the contestability and fairness of commercial relationships in the online platform economy, in particular with a view to determining the need for amendments in light of relevant technological or commercial developments. This evaluation should include the regular review of the list of core platform services and the obligations addressed to gatekeepers as well as enforcement of these, in view of ensuring that digital markets across the Union are contestable and fair. In order to obtain a broad

³⁵ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers, (OJ L 55, 28.2.2011, p. 13).

³⁶ Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making (OJ L 123, 12.5.2016, p.1).

view of developments in the sector, the evaluation should take into account the experiences of Member States and relevant stakeholders. The Commission may in this regard also consider the opinions and reports presented to it by the Observatory on the Online Platform Economy that was first established by Commission Decision C(2018)2393 of 26 April 2018. Following the evaluation, the Commission should take appropriate measures. The Commission should to maintain a high level of protection and respect for the common EU rights and values, particularly equality and non-discrimination, as an objective when conducting the assessments and reviews of the practices and obligations provided in this Regulation.

- (79) The objective of this Regulation is to ensure a contestable and fair digital sector in general and core platform services in particular, with a view to promoting innovation, high quality of digital products and services, fair and competitive prices, as well as a high quality and choice for end users in the digital sector. This cannot be sufficiently achieved by the Member States, but can only, by reason of the business model and operations of the gatekeepers and the scale and effects of their operations, be fully achieved at Union level. The Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.

This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union, in particular Articles 16, 47 and 50 thereof. Accordingly, this Regulation should be interpreted and applied with respect to those rights and principles

Chapter I

Subject matter, scope and definitions

Article 1

Subject-matter and scope

1. This Regulation lays down harmonised rules ensuring contestable and fair markets in the digital sector across the Union where gatekeepers are present.
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 Council³⁷;

³⁷ 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).

- (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.
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.
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 are unrelated to 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.
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 and Regulation (EU) .../.. of the European Parliament and of the Council³⁹.
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 cooperation and coordination in their enforcement actions.

Article 2

Definitions

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

- (1) ‘Gatekeeper’ means a provider of core platform services designated pursuant to Article 3;
- (2) ‘Core platform service’ means any of the following:
- (a) online intermediation services;
 - (b) online search engines;
 - (c) online social networking services;
 - (d) video-sharing platform services;
 - (e) number-independent interpersonal communication services;

³⁸ 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).

³⁹ 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.

- (f) operating systems;
 - (g) cloud computing services;
 - (h) advertising services, including any advertising networks, advertising exchanges and any other advertising intermediation services, provided by a provider of any of the core platform services listed in points (a) to (g);
- (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) 2010/13⁴⁰;
 - (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 Council⁴¹;
 - (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;
 - (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 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;
 - (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;

⁴⁰ 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).

⁴¹ 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).

- (16) 'End user' means any natural or legal person using core platform services other than as a business user;
- (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;
- (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;
- (23) 'Control' means the possibility of exercising decisive influence on an undertaking, as understood in Regulation (EU) No 139/2004.

Chapter II

Gatekeepers

Article 3

Designation of gatekeepers

1. A provider of core platform services shall be designated as gatekeeper if:
 - (a) it has a significant impact on the internal market;
 - (b) it operates 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 shall be presumed to satisfy:
 - (a) the requirement in paragraph 1 point (a) where the undertaking to which it belongs achieves an annual EEA turnover equal to or above EUR 6.5 billion in the last three financial years, or where the average market capitalisation or the 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 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 business users established in the Union in the last financial year;

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;

- (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 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 identified in paragraph 2.. That notification shall include the relevant information identified in paragraph 2 for each of the core platform services of the provider 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).

A failure by a relevant provider of core platform services to notify the required information pursuant to this paragraph shall not prevent the Commission from designating these providers as gatekeepers pursuant to paragraph 4 at any time.

- 4. The Commission shall, without undue delay and at the latest 60 days after receiving the complete information referred to in paragraph 3, designate the provider of core platform services that meets all the thresholds of paragraph 2 as a gatekeeper, unless that provider, 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 does not satisfy the requirements of paragraph 1.

Where the gatekeeper presents such sufficiently substantiated arguments to demonstrate that it does not satisfy the requirements of paragraph 1, the Commission shall apply paragraph 6 to assess whether the criteria in paragraph 1 are met.

- 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 to market and technological developments where necessary, in particular as regards the threshold in paragraph 2, point (a).
- 6. The Commission may identify as a gatekeeper, in accordance with the procedure laid down in Article 15, any provider of 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.

For that purpose, the Commission shall take into account the following elements:

- (a) the size, including turnover and market capitalisation, operations and position of the provider of core platform services;
- (b) the number of business users depending on 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 access to and collection of personal and non-personal data or analytics capabilities;
- (d) scale and scope effects the provider benefits from, including with regard to data;
- (e) business user or end user lock-in;
- (f) other structural market characteristics.

In conducting its assessment, the Commission shall take into account foreseeable developments of these elements.

Where the provider of a core platform service that satisfies 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 has been invited to comply within a reasonable time-limit and to submit observations, the Commission shall be entitled to designate that provider as a gatekeeper.

Where the provider of 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 has been invited to comply within a reasonable time-limit and to submit observations, the Commission shall be entitled to designate that provider as a gatekeeper based on facts available.

7. For each gatekeeper identified 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).
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.

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 needs to be adjusted.

Where the Commission, on the basis of that review pursuant to the first subparagraph, finds that the facts on which the designation of the providers of core

platform services as gatekeepers was based, have changed, it shall adopt a corresponding decision.

3. The Commission shall publish and update the list of gatekeepers and the list of the core platform services for which they need to comply with the obligations laid down in Articles 5 and 6 on an on-going basis.

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:

- (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 and provided consent in the sense of Regulation (EU) 2016/679. ;
- (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;
- (c) allow business users to promote offers to end users acquired via the core platform service, 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 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;
- (d) refrain from preventing or restricting business users from raising issues with any relevant public authority relating to any practice of gatekeepers;
- (e) refrain from requiring business users to use, 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;
- (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;
- (g) provide advertisers and publishers to which it supplies advertising services, upon their request, with information concerning the price paid by the advertiser and publisher, as well as the amount or remuneration paid to the publisher, 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

1. In respect of each of its core platform services identified pursuant to Article 3(7), a gatekeeper shall:
 - (a) refrain from using, in competition with business users, any data not publicly available, which is generated through activities 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;
 - (b) allow end 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 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;
 - (c) allow the installation 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 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;
 - (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;
 - (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 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;
 - (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;
 - (h) provide effective portability of data generated through the activity of a business user or end user and shall, in particular, provide tools for end users to facilitate the exercise of data portability, in line with Regulation EU 2016/679, including by the provision of continuous and real-time access ;
 - (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, 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 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 the Regulation (EU) 2016/679; ;

- (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;
 - (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.
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

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 Regulation (EU) 2016/679 and Directive 2002/58/EC, and with legislation on cyber security, consumer protection and product safety.
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 by decision specify the measures that the gatekeeper concerned shall implement. The Commission shall adopt such a decision within six months from the opening of proceedings pursuant to Article 18.
3. Paragraph 2 of this Article is without prejudice to the powers of the Commission under Articles 25, 26 and 27.
4. In view of adopting the decision under paragraph 2, the Commission shall communicate its preliminary findings within three months from the opening of the proceedings. In the preliminary findings, the Commission shall explain the measures it considers to take or it considers that the provider of core platform services concerned should take in order to effectively address the preliminary findings.
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 the gatekeeper and the relevant service.
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, 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.

Article 8

Suspension

1. The Commission may, 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 by decision adopted in accordance with the advisory procedure referred to in Article 32(4), where the gatekeeper demonstrates that compliance with that specific obligation would endanger, due to exceptional circumstances beyond the control of the gatekeeper, 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.
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 lift the suspension or decide that the conditions of paragraph 1 continue to be met.
3. 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.

Article 9

Exemption for overriding reasons of public interest

1. The Commission may, acting on a reasoned request by a gatekeeper or on its own initiative, by decision adopted in accordance with the advisory procedure referred to in Article 32(4), 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.
2. An exemption pursuant to paragraph 1 may only be granted on grounds of:

- (a) public morality;
 - (b) public health;
 - (c) public security.
3. 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 10 *Updating obligations for gatekeepers*

1. The Commission is empowered to adopt delegated acts in accordance with Article 34 to update the obligations laid down in Articles 5 and 6 where, based on a market investigation pursuant to Article 17, it has identified the need for new obligations addressing practices that limit the contestability of core platform services or are unfair in the same way as the practices addressed by the obligations laid down in Articles 5 and 6.
1. 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 and the gatekeeper is obtaining an advantage from business users that is disproportionate to the service provided by the gatekeeper to business users; or
 - (b) the contestability of markets is weakened as a consequence of such a practice engaged in by gatekeepers.

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, 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.
2. Where consent for collecting and processing of personal data is required to ensure compliance with this Regulation, a gatekeeper shall take the necessary steps to either enable business users to directly obtain the required consent to their processing, where required under Regulation (EU) 2016/679 and Directive 2002/58/EC, or to comply with Union data protection and privacy rules and principles in other ways including by providing business users with duly anonymised data where appropriate.

The gatekeeper shall not make the obtaining of this consent by the business user more burdensome than for its own services.

3. A gatekeeper shall not degrade the conditions or quality of any of the core platform services provided to business users or end users who avail themselves of the rights or choices laid down in Articles 5 and 6, or make the exercise of those rights or choices unduly difficult.

Article 12

Obligation to inform about concentrations

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 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.

A gatekeeper shall inform the Commission of such a concentration prior to its implementation and following the conclusion of the agreement, the announcement of the public bid, or the acquisition of a controlling interest.
2. The notification pursuant to paragraph 1 shall at least describe for the acquisition targets their EEA and worldwide annual turnover, 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.
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).

Article 13

Obligation of an audit

Within six months after its designation pursuant to Article 3, a gatekeeper shall submit to the Commission an independently audited description of any techniques for profiling of consumers that the gatekeeper applies to or across its core platform services identified pursuant to Article 3. This description 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 provider of core platform services 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.
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 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 should be designated as a gatekeeper pursuant to Article 3(6).
3. Where the provider of core platform services satisfies the thresholds set out in Article 3(2), but has presented significantly 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 within three months from the opening of the investigation.
4. When the Commission pursuant to Article 3(6) designates as a gatekeeper a provider of core platform services 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 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 designation in accordance with the procedure laid down in Article 4.

Article 16

Market investigation into systematic non-compliance

1. Where the market investigation shows 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 may by decision adopted in accordance with the advisory procedure referred to in Article 32(4) 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.
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

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 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.

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;

- (b) be accompanied by a delegated act amending Articles 5 or 6 as provided for in Article 10.

Chapter V

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 7, 25 and 26, it shall adopt a decision opening a proceeding.

Article 19

Requests for information

1. 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.
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 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.
4. Where the Commission requires undertakings and associations of undertakings to supply information by decision, it shall state 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.
5. The undertakings or associations of undertakings or their representatives 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.
6. At the request of the Commission, the governments and authorities of the Member States shall provide the Commission with all necessary information to carry out the duties assigned to it by this Regulation.

Article 20

Power to carry out interviews and take statements

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. 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).
3. During on-site inspections the Commission and auditors or experts appointed by it 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 may address questions to key personnel.
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.

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 adopt in accordance with the advisory procedure referred to in Article 32(4), 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(4) make those commitments binding on that gatekeeper and declare that there are no further grounds for action.
2. The Commission may, upon request or on its own initiative, reopen by decision the relevant proceedings, where:

- (a) 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 to assist the Commission to monitor the obligations and measures and to provide specific expertise or knowledge to the Commission.

Article 25
Non-compliance

1. The Commission shall adopt a non-compliance decision in accordance with the advisory procedure referred to in Article 32(4) 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 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 turnover in the preceding financial year where it finds that the gatekeeper, intentionally or negligently, fails to comply with:
 - (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 the total turnover in the preceding financial year where they intentionally or negligently:
 - (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;
 - (c) fail to submit the description that is required pursuant to Article 13;
 - (d) 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 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 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 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 and either were not aware of its existence or have actively distanced themselves from it before the Commission started investigating the case.

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

Article 27

Periodic penalty payments

1. The Commission may by decision impose on undertakings, including gatekeepers where applicable, periodic penalty payments not exceeding 5 % of the average daily 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(4) set the definitive amount of the periodic penalty payment at a figure lower than that which would arise under the original decision.

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 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;
 - (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.

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.

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.
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 authorities of the Member States. In particular, the right of access shall not extend to correspondence between the Commission and the authorities of the Member States. Nothing in this paragraph shall prevent the Commission from disclosing and using information necessary to prove an infringement.

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.
2. Without prejudice to the exchange and to the use of information provided for the purpose of use pursuant to Articles 32 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.

Article 32
Digital Markets Advisory Committee

1. The Commission shall be assisted by the Digital Markets Advisory Committee. That Committee shall be a Committee within the meaning of Regulation (EU) No 182/2011.
2. 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 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.
4. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.

Article 33
Request for a market investigation

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 provider of core platform services should be designated as a gatekeeper, the Commission shall within four months examine whether there are reasonable grounds to open such an investigation.
2. Member States shall submit evidence in support of their request.

Chapter VI

General provisions

Article 34
Publication of decisions

1. The Commission shall publish the decisions which it takes pursuant to Articles 3, 7, 8, 9, 15, 16, 17, 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.
2. 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).
 - (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;
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(4). 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(6) and 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(6) and 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(6) and 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 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 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.
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.

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.
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
The President

For the Council
The President

LEGISLATIVE FINANCIAL STATEMENT

1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

- 1.1. Title of the proposal/initiative
- 1.2. Policy area(s) concerned in the ABM/ABB structure
- 1.3. Nature of the proposal/initiative
- 1.4. Objective(s)
- 1.5. Grounds for the proposal/initiative
- 1.6. Duration and financial impact
- 1.7. Management mode(s) planned

2. MANAGEMENT MEASURES

- 2.1. Monitoring and reporting rules
- 2.2. Management and control system
- 2.3. Measures to prevent fraud and irregularities

3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

- 3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected
- 3.2. Estimated impact on expenditure
 - 3.2.1. *Summary of estimated impact on expenditure*
 - 3.2.2. *Estimated impact on operational appropriations*
 - 3.2.3. *Estimated impact on appropriations of an administrative nature*
 - 3.2.4. *Compatibility with the current multiannual financial framework*
 - 3.2.5. *Third-party contributions*
- 3.3. Estimated impact on revenue

LEGISLATIVE FINANCIAL STATEMENT

1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

1.1. Title of the proposal/initiative

Regulation of the European Parliament and of the Council on Digital Markets Act

1.2. Policy area(s) concerned in the ABM/ABB structure¹

Policy area: Single Market

Digital Europe

The budgetary impact concerns the new tasks entrusted with the Commission, including the direct supervisory tasks.

1.3. Nature of the proposal/initiative

☒ The proposal/initiative relates to **a new action**

☐ The proposal/initiative relates to **a new action following a pilot project/preparatory action²**

☐ The proposal/initiative relates to **the extension of an existing action**

☐ The proposal/initiative relates to **an action redirected towards a new action**

1.4. Objective(s)

1.4.1. *The Commission's multiannual strategic objective(s) targeted by the proposal/initiative*

The general objective of this initiative is to ensure the proper functioning of the internal market by promoting effective competition in digital markets, in particular a contestable and fair online platform environment. This objective feeds into the strategic course set out in the Communication 'Shaping Europe's digital future'.

1.4.2. *Specific objective(s) and ABM/ABB activity(ies) concerned*

To address market failures to ensure contestable and competitive digital markets for increased innovation and consumer choice.

To address gatekeepers' unfair conduct.

To enhance coherence and legal certainty to preserve the internal market.

¹ ABM: activity-based management; ABB: activity-based budgeting.

² As referred to in Article 54(2)(a) or (b) of the Financial Regulation.

1.4.3. Expected result(s) and impact

Specify the effects which the proposal/initiative should have on the beneficiaries/groups targeted.

Interventions aiming at increasing the contestability of the digital sector would have a significant positive and growing contribution to achieve all of the potential benefits of a Digital Single Market, also resulting in lower prices and greater consumer choice, productivity gains and innovation.

Efficiency gains from the Digital Single Market, would contribute to a 1.5% increase in GDP per year until 2030 and create between 1 and 1.4 million jobs.³ In particular, the impact of a more efficient Digital Single Market ranges from 0.44 to 0.82% changes in GDP and between 307 and 561 thousand additional FTEs.

Addressing gatekeepers' unfair business practices would have a positive impact on the online platform economy in general. The envisaged measures would limit the chilling effects unfair conduct has on sales. Businesses, especially smaller ones, would be more confident in engaging with gatekeepers if the latter are obliged to comply with clear fairness rules.

A regulatory action is expected to result not only in more sales through smaller platform but also to have a positive impact on market growth. It would reinforce trust in the platform business environment since they foresee an adaptable framework, based both on a clear set of obligations and a flexible list of obligations subject to an assessment of the applicability of the conducts to the specific case.

The benefits can be expected to lead to greater innovation potential amongst smaller businesses as well as improved quality of service, with associated increases in consumer welfare. Assuming that interventions foreseen would reduce competitive asymmetries between gatekeepers and other platforms, a consumer surplus could be estimated at 13 billion euros, i.e. around 6% increase as compared to the baseline.

1.4.4. Indicators of results and impact

Specify the indicators for monitoring implementation of the proposal/initiative.

Specific objective	Operational objectives	Potential Measuring indicators
Enhance coherence and legal certainty in the online platform environment in the internal market	Limit the diverging national regulatory interventions Ensure coherent interpretation of obligations	Number of regulatory interventions at the national level Number of clarification requests per year
Address gatekeeper platforms' unfair conduct	Preventing identified unfair self-preferencing practices	Number of compliance interventions by the Commission per gatekeeper platform/per year Number of sanction decisions per gatekeeper platform/per year

³ M. Christensen, A. Conte, F. Di Pietro, P. Lecca, G. Mandras, & S. Salotti (2018), The third pillar of the Investment Plan for Europe: An impact assessment using the RHOMOLO model (No. 02/2018). JRC Working Papers on Territorial Modelling and Analysis.

Address market failures to ensure contestable and competitive digital markets for increased innovation and consumer choice	Preventing unfair practices concerning access to gatekeeper platforms' services and platforms	Share of users multi-homing with different platforms or services
	Preventing unfair data related practices and ensuring the compliance with obligations	Share of users switching between different platforms and services

1.5. Grounds for the proposal/initiative

1.5.1. Requirement(s) to be met in the short or long term

The Regulation should be directly applicable after 6 months from its adoption, and by that time the EU governance should allow that effective procedures are in place for the designation of the core platform services and enforcement of the rules. By that moment, therefore, the Commission will be empowered to adopt decisions concerning the designation of the gatekeepers, specifying the measures that the gatekeeper concerned should implement, carry out market investigations and be ready to perform any other investigative, enforcement and monitoring powers.

At the same time, Member States shall have appointed representatives to the Digital Markets Advisory Committee.

1.5.2. Added value of EU involvement

For the purposes of this point 'added value of Union involvement' is the value resulting from Union intervention which is additional to the value that would have been otherwise created by Member States alone.

Reasons for action at European level (ex-ante):

In order to ensure the proper functioning of the single market, the intervention provides, inter alia, for the appropriate regulatory framework for core platform services acting as gatekeepers. By promoting effective competition in digital markets and in particular a contestable and fair online platform environment, it supports trust, innovation and growth in the single market.

There is an emerging fragmentation of the regulatory landscape and oversight in the Union, as Member States address platform related problems at national level. This is suboptimal in light of the cross border nature of the platform economy and the systemic importance of gatekeeper platforms for the internal market. Divergent fragmentation could create legal uncertainty and higher regulatory burdens for participants in the platform economy. Such fragmentation puts at risk the scaling-up of start-ups and smaller businesses and their ability to thrive in digital markets.

This initiative therefore aims at improving coherent and effective oversight and enforcement of measures against core platform services.

Expected generated Union added value (ex-post):

This initiative is expected to lead to greater innovation potential amongst smaller businesses as well as improved quality of service. By preserving the internal market in the platform space cross-border trade, this would lead to a gain of EUR 92.8 billion by 2025.⁴

⁴

Cross-border e-commerce in Europe was worth EUR 143 billion in 2019, with 59% of this market being generated by online marketplaces. This is projected to increase to 65% in 2025 (CNECT/GROW study).

With regard to added value in the enforcement of measures, the initiative creates important efficiency gains. Assuming that interventions foreseen would reduce competitive asymmetries between gatekeepers and other platforms, a consumer surplus could be estimated at EUR 13 billion.

1.5.3. *Lessons learned from similar experiences in the past*

The E-commerce Directive 2000/31/EC provides the core framework for the functioning of the single market and the supervision of digital services and sets a basic structure for a general cooperation mechanism among Member States, covering in principle all requirements applicable to digital services. The evaluation of the Directive pointed to shortcomings in several aspects of this cooperation mechanism,⁵ including important procedural aspects such as the lack of clear timeframes for response from Member States coupled with a general lack of responsiveness to requests from their counterparts.

At national level, some Member States already started to adopt national rules in response to the problems associated to the conduct of gatekeepers in the digital sector. Fragmentation already exists with regard to platform-specific regulation, as for example in the cases of transparency obligations and MFN clauses. Divergent fragmentation gives rise to legal uncertainty and higher regulatory burdens for those players. Therefore, action at the EU level is deemed necessary.

1.5.4. *Compatibility and possible synergy with other appropriate instruments*

This initiative leverages existing platform regulation, without conflicting with it, while providing for an effective and proportionate enforcement mechanism that matches the need to strictly enforce the targeted obligations vis-a-vis a limited number of cross-border platform providers that serve as important gateways for business users to reach consumers.

Different from the P2B Regulation, it foresees EU-level enforcement of a narrow set of very precise unfair practices engaged in by a restricted group of large, cross-border gatekeepers. This EU-level enforcement mechanism is consistent with the enforcement of the P2B Regulation. Gatekeepers integrate several cross-border core platform services, and a central EU-level regulator with strong investigatory powers is required both to prevent fragmented outcomes as well as to prevent circumvention of the new rules. To this end, the new EU-level regulator can leverage the transparency that each of the online intermediation services and online search engines have to provide under the P2B Regulation on practices that could precisely be illegal under the list of obligations – if engaged in by gatekeepers.

The Digital Services Act ('DSA') is complementary to the proposal for the update of the e-Commerce Directive ('ECD') under the DSA. While the DSA is a horizontal initiative focusing on issues such as liability of online intermediaries for third party content, safety of users online or asymmetric due diligence obligations for different providers of information society services depending on the nature of the societal risks such services represent, the present initiative is concerned with economic imbalances, unfair business practices by gatekeepers and their negative

⁵ Member States have repeatedly raised these issues in the consultation conducted in 2019, the targeted consultation of 2020 as well as in the open public consultation and discussion in the e-Commerce Expert Group in October 2019.

consequences, such as weakened contestability of platform markets. To the extent that the DSA contemplates an asymmetric approach which may impose stronger due diligence obligations on very large platforms, consistency will be ensured in defining the relevant criteria, while taking into account the different objectives of the initiatives.

1.6. Duration and financial impact

- ☐ Proposal/initiative of **limited duration**
 - ☐ Proposal/initiative in effect from [DD/MM]YYYY to [DD/MM]YYYY
 - ☐ Financial impact from YYYY to YYYY
- ☒ Proposal/initiative of **unlimited duration**
 - Implementation with a start-up period from 2022 to 2025,
 - followed by full-scale operation.

1.7. Management mode(s) planned⁶

- ☒ **Direct management** by the Commission
 - ☒ by its departments, including by its staff in the Union delegations;
 - ☐ by the executive agencies
- ☐ **Shared management** with the Member States
- ☐ **Indirect management** by entrusting budget implementation tasks to:
 - ☐ third countries or the bodies they have designated;
 - ☐ international organisations and their agencies (to be specified);
 - ☐ the EIB and the European Investment Fund;
 - ☐ bodies referred to in Articles 208 and 209 of the Financial Regulation;
 - ☐ public law bodies;
 - ☐ bodies governed by private law with a public service mission to the extent that they provide adequate financial guarantees;
 - ☐ bodies governed by the private law of a Member State that are entrusted with the implementation of a public-private partnership and that provide adequate financial guarantees;
 - ☐ persons entrusted with the implementation of specific actions in the CFSP pursuant to Title V of the TEU, and identified in the relevant basic act.
 - *If more than one management mode is indicated, please provide details in the 'Comments' section.*

Comments

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⁶ Details of management modes and references to the Financial Regulation may be found on the BudgWeb site: http://www.cc.cec/budg/man/budgmanag/budgmanag_en.html

2. MANAGEMENT MEASURES

2.1. Monitoring and reporting rules

Specify frequency and conditions.

The Regulation will be reviewed and evaluated every third year. Moreover, in the context of the application of the measures, the Commission in its continuous evaluation of the effectiveness and efficiency of the measures, including supervision and analysis of emerging issues, will carry out several monitoring actions. In particular, a review may be required when additional rules, including regarding enforcement, are determined necessary to ensure that digital markets across the EU are contestable and fair.

The Commission must report on the findings to the European Parliament, the Council and the European Economic and Social Committee.

2.2. Management and control system

2.2.1. Risk(s) identified

With regard to the implementation of the Regulation, the following main risks can be identified:

Risks for the effectiveness of the the Regulation, due to legal uncertainties relating to certain key aspects of the obligations; and

Risks for the effectiveness of the the Regulation, possibility of due to material changes in facts.

With regards to expenditures the following main risks can be identified:

Risk of poor quality of selected sectoral experts and poor technical implementation, reducing the impact of the monitoirng due to inadequate selection procedures, lack of expertise or insufficient monitoring; and

Risk of inefficient and ineffective use of funds awarded for procurement (sometimes limited number of economic providers making it difficult to compare prices).

Risk as regards management of IT-projects in particular in terms of delays, of cost-risk overruns and overall governance.

2.2.2. Information concerning the internal control system set up

With regard to the implementation of the Regulation, the following internal control system is foreseen:

A dialogue between the Commission and the gatekeeper concerned may be required to ensure that measures considered or implemented by the gatekeepers better achieve its goals. By introducing the possibility for such a dialogue, the initiaitve can be expected to be more effective in addressing unfair practices hampering market contestability and competition. It will, at the same time, be proportionate for the gatekeepers concerned, since they would have certain margin of appreciation in implementing measures that effectively ensure compliance with the identified obligations.

The designation of the gatekeeper is also subject to regular reviewed where there would be a material change in any of the facts on which the designation decision was

based, and where the decision was based on incomplete, incorrect or misleading information provided by the undertakings.

Finally, this initiative comprises a dynamic mechanism allowing to update the list of obligations in case new practices are deemed unfair after a market investigation.

With regards to expenditures, the following internal control system is foreseen:

These risks related to expenditures can be mitigated by better targeted proposals and tender documents and the use of simplified procedures as introduced in the latest financial regulation. The activities as regards financial resources, will be implemented mainly through public procurement under direct management mode. Therefore the associated legality and regularity risks are considered to be (very) low.

Many of these risks are linked to the inherent nature of these projects and will be mitigated by means of appropriate project management system and project management reporting, including risk reports that will be submitted to senior management as required.

The internal control framework is built on the implementation of the Commission's Internal Control Principles. In line with the requirement of the Financial Regulation, an important objective of the Commission's "budget focused on results strategy" is to ensure cost-effectiveness when designing and implementing management and control systems which prevent or identify and correct errors. The control strategy therefore considers a higher level of scrutiny and frequency in riskier areas and ensures cost-effectiveness.

There will be a constant link with policy work, which will ensure the necessary flexibility for adapting the resources to actual policy needs in an area subject to frequent changes.

2.2.3. *Estimate of the costs and benefits of the controls and assessment of the expected level of risk of error*

The costs of controls are estimated to be less than 3% of total expenditure. The benefits of controls in non-financial terms cover: better value for money, deterrence, efficiency gains, system improvements and compliance with regulatory provisions.

The risks are effectively mitigated by means of controls put in place, and the level of risk of error is estimated to less than 2%.

2.3. **Measures to prevent fraud and irregularities**

Specify existing or envisaged prevention and protection measures.

The prevention and protection measures focus on increasing transparency in management meetings and contacts with stakeholders, following the best public procurement practices, including usage of e-procurement and e-submission tool. The actions also will prevent and detect possible conflict of interests.

3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected

- Existing budget lines

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
		Diff./Non-diff. ¹	from EFTA countries ²	from candidate countries ³	from third countries	within the meaning of Article 21(2)(b) of the Financial Regulation
1	03 02 Single Market Programme (incl SMEs)	Diff.	YES	NO	NO	NO
1	02 04 05 01 Digital Europe Programme	Diff.	YES	NO	NO	NO
7	20.0206 Other management expenditure	Non-diff.	NO	NO	NO	NO

¹ Diff. = Differentiated appropriations / Non-diff. = Non-differentiated appropriations.

² EFTA: European Free Trade Association.

³ Candidate countries and, where applicable, potential candidate countries from the Western Balkans.

3.2. Estimated impact on expenditure

3.2.1. Summary of estimated impact on expenditure

EUR million (to three decimal places)

Heading of multiannual financial framework	1	Single Market Innovation and Digital ¹
--	---	---

			2021	2022	2023	2024	2025	2026	2027	Post 2027	TOTAL
Operational appropriations – 03 02 Single Market Programme	Commitments	(1)	N/A	0,667	3,667	4,633	4,133	3,667	3,533		20,300
	Payments	(2)	N/A	0,333	2,167	4,150	4,383	3,900	3,600	1,767	20,300
Operational appropriations - 02 04 05 01 Digital Europe Programme	Commitments	(1)	N/A	0,333	1,833	2,317	2,067	1,833	1,767		10,150
	Payments	(2)	N/A	0,167	1,083	2,075	2,192	1,950	1,800	0,883	10,150
Appropriations of an administrative nature financed from the envelope of the programme	Commitments = Payments	(3)	N/A	N/A	N/A	N/A	N/A	N/A	N/A		N/A
TOTAL appropriations under HEADING 1 of the multiannual financial framework	Commitments	=1+3	N/A	1,000	5,500	6,950	6,200	5,500	5,300		30,450
	Payments	=2+3	N/A	0,500	3,250	6,225	6,575	5,850	5,400	2,650	30,450

Heading of multiannual financial	7	‘Administrative expenditure’
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¹ The breakdown of the budget between programmes is indicative.

framework		
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EUR million (to three decimal places)

		2021	2022	2023	2024	2025	2026	2027	Post 2027	TOTAL
Human resources		N/A	3,000	5,320	7,845	10,300	10,300	10,300		47,065
Other administrative expenditure		N/A	0,050	0,675	1,125	0,625	0,575	0,525		3,575
TOTAL appropriations under HEADING 7 of the multiannual financial framework	(Total commitments = Total payments)	N/A	3,050	5,995	8,970	10,925	10,875	10,825		50,640

EUR million (to three decimal places)

		2021	2022	2023	2024	2025	2026	2027	Post 2027	TOTAL
TOTAL appropriations under HEADINGS 1 to 7 of the multiannual financial framework	Commitments	N/A	4,050	11,495	15,920	17,125	16,375	16,125		81,090
	Payments	N/A	3,550	9,245	15,195	17,500	16,725	16,225	2,650	81,090

3.2.2. *Estimated impact on operational appropriations*

It is not possible to provide an exhaustive list of outputs to be delivered by means of financial interventions, average cost and numbers as requested by this section as this is a new initiative and there is no previous statistical data to draw from.

The Regulation aims at (i) addressing market failures to ensure contestable and competitive digital markets for increased innovation and consumer choice, (ii) addressing gatekeepers' unfair conduct and (iii) enhancing coherence and legal certainty in the online platform environment for a preserved internal market. All these objectives contribute to achieving the general objective of ensuring the proper functioning of the internal market (through effective competition in digital markets and through a contestable and fair online platform environment).

In order to optimally achieve these objectives, it is foreseen inter alia to finance the following actions:

- (1) carry out designation of providers of core platform services subject to the Regulation through a declaratory process;
- (2) carry out market investigations, perform any other investigative actions, enforcement actions and monitoring activities;
- (3) regularly carry out review of specific elements of the Regulation and evaluation of the Regulation;
- (4) continuous evaluation of the effectiveness and efficiency of the measures implemented;
- (5) maintain, develop, host, operate and support a central information system in compliance with the relevant confidentiality and data security standards;
- (6) follow-up experts evaluations, where these appointed; and
- (7) other administrative costs incurred in connection with the implementation of the various actions, such as:
 - (7.i) costs related to missions for staff, including in case of on-site inspections ;
 - (7.ii) costs related to the organisation of meetings, namely Advisory Committees;
 - (7.iii) costs relating to training for staff; and
 - (7.iv) costs relating to expert advice.

3.2.3. Estimated impact on appropriations of an administrative nature

3.2.3.1. Summary

- ☐ The proposal/initiative does not require the use of appropriations of an administrative nature
- ☒ The proposal/initiative requires the use of appropriations of an administrative nature, as explained below:

EUR million (to three decimal places)

Years	2021	2022 ¹	2023	2024	2025	2026	2027	TOTAL
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HEADING 7 of the multiannual financial framework								
Human resources	N/A	3,000	5,320	7,845	10,300	10,300	10,300	47,065
Other administrative expenditure	N/A	0,050	0,675	1,125	0,625	0,575	0,525	3,575
Subtotal HEADING 7 of the multiannual financial framework	N/A	3,050	5,995	8,970	10,925	10,875	10,825	50,640

Outside HEADING 7² of the multiannual financial framework								
Human resources	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Other expenditure of an administrative nature	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Subtotal outside HEADING 7 of the multiannual financial framework	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A

TOTAL	N/A	3,050	5,995	8,970	10,925	10,875	10,825	50,640
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The appropriations required for human resources and other expenditure of an administrative nature will be met by appropriations from the DG that are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

¹ Year N is the year in which implementation of the proposal/initiative starts.

² Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former 'BA' lines), indirect research, direct research.

3.2.3.2. Estimated requirements of human resources

- ☐ The proposal/initiative does not require the use of human resources.
- ☒ The proposal/initiative requires the use of human resources, as explained below:

The Digital Markets Act is a new regulatory initiative that feeds into the strategic course set out in the Communication ‘Shaping Europe’s digital future’. This has a horizontal nature and cross-cuts various competence domains of the Commission, such as those related to internal market, digital services and protection of competition.

To ensure that the regulation is implemented by the companies, ex-ante controls and monitoring, such as designate gatekeepers, monitor compliance by gatekeepers, adopt non-compliance decisions, assess exemption requests, conduct market investigations and enforce the resulting decisions and implement acts, will have to be put in place at the level of EU. When estimating the budget and the number of staff required for the initiative, efforts to create synergies and build on existing framework have been made in order to avoid the need to build from scratch, which would require even more staff than the current calculation.

Although synergies in terms of staff, knowledge and infrastructure can be found within the three leading DGs and the Commission services, the importance and extent of the initiative goes beyond the current framework. The Commission will have to increase its presence in the Digital Markets, moreover, as the regulation foresees legal deadlines also means that resources must be allocated to these tasks without delays. To reallocate the required human resources within the three leading DGs is currently not possible without jeopardising all other areas of enforcement. It is therefore important to also re-deploy staff from sources outside the three leading DGs if we are to meet the objective of the initiative as well as the objectives of the three leading DGs.

Estimate to be expressed in full time equivalent units

Years		2021	2022	2023	2024	2025	2026	2027	Post 2027
• Establishment plan posts (officials and temporary staff)									
Headquarters and Commission’s Representation Offices			20	30	43	55	55	55	55
Delegations									
Research									
• External staff (in Full Time Equivalent unit: FTE) - AC, AL, END, INT and JED ³									
Heading 7									
Financed from HEADING 7 of the multiannual financial	- at Headquarters			10	17	25	25	25	25
	- in Delegations								

³ AC= Contract Staff; AL = Local Staff; END = Seconded National Expert; INT = agency staff; JPD= Junior Professionals in Delegations.

framework									
Financed from the envelope of the programme ⁴	- at Headquarters								
	- in Delegations								
Research									
Other (specify)									
TOTAL			20	40	60	80	80	80	80

The human resources required will be met by staff from the DG who are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

Description of tasks to be carried out:

Officials and temporary staff	Adopt designation decisions and conduct market investigations aimed at designating gatekeepers. Monitor compliance with the list of obligations and, if relevant, adopt non-compliance decisions Conduct market investigations in relation to new services and new practices Preparation and drafting of implementing and delegated acts, in compliance with this Regulation
External staff	Adopt designation decisions and conduct market investigations aimed at designating gatekeepers. Monitor compliance with the list of obligations and, if relevant, adopt non-compliance decisions Conduct market investigations in relation to new services and new practices Preparation and drafting of implementing and delegated acts, in compliance with this Regulation

⁴ Sub-ceiling for external staff covered by operational appropriations (former 'BA' lines).

3.2.4. *Compatibility with the current multiannual financial framework*

- ☒ The proposal/initiative is compatible the current multiannual financial framework.

The initiative can be fully financed through redeployment within the relevant heading of the Multiannual Financial Framework (MFF). The financial impact on operational appropriations will be entirely covered by the allocations foreseen in the MFF 2021-27 under the financial envelopes of the Single Market Programme and the Digital Europe Programme.

- ☐ The proposal/initiative will entail reprogramming of the relevant heading in the multiannual financial framework.
- ☐ The proposal/initiative requires application of the flexibility instrument or revision of the multiannual financial framework.

3.2.5. *Third-party contributions*

- The proposal/initiative does not provide for co-financing by third parties.

3.3. Estimated impact on revenue

The initiative has the following financial impact on other revenue.

The amount of the revenue cannot be estimated in advance as it concerns fines on undertaking for not complying with obligations laid down in the Regulation.

EUR million (to three decimal places)

Budget revenue line: Chapter 42 – fines and penalties	Appropriations available for the current financial year	Impact of the proposal/initiative						
		Year N	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)		
Article			p.m.	p.m.	p.m.	p.m.	p.m.	p.m.

ANNEX
to the LEGISLATIVE FINANCIAL STATEMENT

Name of the proposal/initiative:

Regulation of the European Parliament and of the Council on Digital Markets Act

NUMBER and COST of HUMAN RESOURCES CONSIDERED NECESSARY

COST of OTHER ADMINISTRATIVE EXPENDITURE

METHODS of CALCULATION USED for ESTIMATING COSTS
Human resources

Other administrative expenditure

ADDITIONAL REMARKS to the LEGISLATIVE FINANCIAL STATEMENT and its ANNEX

This annex must accompany the legislative financial statement when the inter-services consultation is launched.

The data tables are used as a source for the tables contained in the legislative financial statement. They are strictly for internal use within the Commission.

Cost of human resources considered necessary

The proposal/initiative requires the use of human resources, as explained below:

EUR million (to three decimal places)

HEADING 7 of the multiannual financial framework	2021		2022		2023		2024		2025		2026		2027		TOTAL	
	FTE	Appropriations	FTE	Appropriations	FTE	Appropriations	FTE	Appropriations	FTE	Appropriations	FTE	Appropriations	FTE	Appropriations	FTE	Appropriations
• Establishment plan posts (officials and temporary staff)																
Headquarters and Commission's Representation Offices	AD		17	2,550	25	3,750	37	5,550	47	7,050	47	7,050	47	7,050		33,000
	AST		3	0,450	5	0,750	6	0,900	8	1,200	8	1,200	8	1,200		5,700
• External staff ¹																
Global envelope	AC				6	0,480	10	0,800	15	1,2	15	1,200	15	1,200		4,880
	END				4	0,340	7	0,595	10	0,850	10	0,850	10	0,850		3,485
	INT															
Subtotal – HEADING 7 of the multiannual financial framework			20	3,000	40	5,320	60	7,845	80	10,300	80	10,300	80	10,300		47,065

The administrative appropriations required will be met by the appropriations which are already assigned to management of the action and/or which have been redeployed, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of existing budgetary constraints.

¹ AC = Contract Staff; AL = Local Staff; END = Seconded National Expert; INT= agency staff; JPD= Junior Professionals in Delegations.

Cost of other administrative expenditure

The proposal/initiative requires the use of administrative appropriations, as explained below:

EUR million (to three decimal places)

HEADING 7 of the multiannual financial framework	2021	2022	2023	2024	2025	2026	2027	Total
<u>At headquarters:</u>								
Mission and representation expenses	--	--	0,050	0,050	0,050	0,050	0,050	0,250
Advisory committees	--	0,050	0,100	0,150	0,150	0,150	0,150	0,750
Studies and consultations	--	--	0,500	0,900	0,400	0,350	0,300	2,450
Training of staff	--	--	0,025	0,025	0,025	0,025	0,025	0,125
Information and management systems	--	--	--	--	--	--	--	--
ICT equipment and services ¹	--	--	--	--	--	--	--	--
Subtotal HEADING 7 of the multiannual financial framework	--	0,050	0,675	1,125	0,625	0,575	0,525	3,575

¹ ICT: Information and Communication Technologies: DIGIT must be consulted.

EUR million (to three decimal places)

Outside HEADING 7 of the multiannual financial framework	2021	2022	2023	2024	2025	2026	2027	Total
Expenditure on technical and administrative assistance (<u>not including</u> external staff) from operational appropriations (former 'BA' lines)								
- at Headquarters	--	--	--	--	--	--	--	--
- in Union delegations	--	--	--	--	--	--	--	--
Other management expenditure for research	--	--	--	--	--	--	--	--
Other budget lines (<i>specify where necessary</i>)	--	--	--	--	--	--	--	--
ICT equipment and services ²	--	--	--	--	--	--	--	--
Sub-total – Outside HEADING 7 of the multiannual financial framework	--	--	--	--	--	--	--	--

1. TOTAL								
2. HEADING 7 and Outside HEADING 7 of the multiannual financial framework	--	0,050	0,675	1,125	0,625	0,575	0,525	3,575

The administrative appropriations required will be met by the appropriations which are already assigned to management of the action and/or which have been redeployed, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of existing budgetary constraints.

² ICT: Information and Communication Technologies: DIGIT must be consulted.

Methods of calculation used to estimate costs

Human resources

The Digital Markets Act is a new regulatory initiative that feeds into the strategic course set out in the Communication ‘Shaping Europe’s digital future’. This has a horizontal nature and cross-cuts various competence domains of the Commission, such as those related to internal market, digital services and protection of competition.

To ensure that the regulation is implemented by the companies, ex-ante controls and monitoring, such as designate gatekeepers, monitor compliance by gatekeepers, adopt non-compliance decisions, assess exemption requests, conduct market investigations and enforce the resulting decisions and implement acts, will have to be put in place at the level of EU.

When estimating the budget and the number of staff required for the initiative, efforts to create synergies and build on existing framework have been made in order to avoid the need to build from scratch, which would require even more staff than the current calculation.

Although synergies in terms of staff, knowledge and infrastructure can be found within the three leading DGs and the Commission services, the importance and extent of the initiative goes beyond the current framework. The Commission will have to increase its presence in the Digital Markets, moreover, as the regulation foresees legal deadlines also means that resources must be allocated to these tasks without delays. To reallocate the required human resources within the three leading DGs is currently not possible without jeopardising all other areas of enforcement. It is therefore important to also re-deploy staff from sources outside the three leading DGs if we are to meet the objective of the initiative as well as the objectives of the three leading DGs.

1. HEADING 7 of the multiannual financial framework
• Officials and temporary staff Assuming adoption by 2022, the Commission will have to set-up the resources needed to ensure the fulfilment of its new tasks, including the adoption of the implementing and delegated acts mandated by the Regulation. As from the date of application of the obligations (2022), it is estimated that new tasks related to the DMA (designate gatekeepers, monitor compliance by gatekeepers, adopt non-compliance decisions, assess exemption requests, conduct market investigations and enforce the resulting decisions, implement acts) initially require additional 20 FTE (17 AD + 3 AST), increasing up to 55 FTE (47 AD + 8 AST) by 2025.
• External staff As from the second year of application of the obligations (2023), it is estimated that new tasks related to the DMA (designate gatekeepers, monitor compliance by gatekeepers, adopt non-compliance decisions, assess exemption requests, conduct market investigations and enforce the resulting decisions, implement acts) initially require additional 10 FTE (6 AC + 4 END), increasing up to 25 FTE (15 AC + 10 END) by 2025.

2. Outside HEADING 7 of the multiannual financial framework
• Only posts financed from the research budget - N/A
• External staff – N/A

Other administrative expenditure

3. HEADING 7 of the multiannual financial framework

Missions and representation expenses

- It is estimated that 10 on-site investigations of gatekeepers is needed per year as of 2023. Average cost per investigation is estimated to 5.000 EUR per mission, assuming 2 FTEs on site with a duration of 5 days

Advisory Committees

- 5 advisory committee meetings are estimated to take place in 2022, 10 in 2023, 15 per annum in 2024-2027. The costs per meeting are estimated to 10.000 EUR.

Training

- Training budget for staff is an important component in assuring the quality and specific competence in this field. It is estimated that the costs will be 25.000 EUR per year.

Studies and consultations

- Expenditure for highly specialised sectoral experts will be necessary to provide technical support in the designation of gatekeepers and to monitor compliance with the measures established under this Regulation. It is estimated to perform up to 6-7 monitoring studies between 2023-2027 with a complexity ranging from low to very complex, corresponding contracts value between 50.000-1.000.000 EUR. It is expected that the needs for these expert will be higher in the beginning of the period.

4. Outside HEADING 7 of the multiannual financial framework

N/A

Additional remarks to the Legislative Financial statement and its annex

The operational expenditure will be divided between DG COMP and DG GROW for the Single Market Programme and DG CNECT for the Digital Europe Programme.

The administrative expenditure will be divided between DG COMP, DG GROW and DG CNECT.

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