

Consultation on the template for compliance report under the DMA

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The Commission is consulting on the template for the compliance report that designated gatekeepers will have to submit annually under Article 11 of the Digital Markets Act ('DMA').

Gatekeepers will be required to provide the Commission with their first compliance report within six months of their designation as gatekeepers. They will then be required to update these reports annually.

With the published consultation, the Commission is seeking feedback on the draft template that specifies the minimum information that the Commission expects gatekeepers to provide in their compliance report.

The gatekeeper's compliance reports will play an important role in enabling the Commission to verify that the gatekeepers comply with the obligations and prohibitions set out in Article 5, 6 and 7 of the DMA and that the measures implemented by the gatekeepers are effective in achieving the objective of the DMA. Where necessary, the Commission can make use of its investigatory and enforcement powers to ensure effective compliance with the DMA.

Target Group

All citizens, companies and organisations are welcome to contribute to this consultation. Contributions are sought particularly from undertakings, which are potential gatekeepers under the Digital Markets Act, as well as business users and end users of the potential gatekeepers and associations representing these users.

Objective of the consultation

The objective of the consultation is to gather comments on the draft template for the compliance report to be submitted by gatekeepers under Article 11 of the DMA.

In particular, the Commission would welcome feedback on the following two items:

- Precise indicators that the Commission could use to assess whether the measures implemented by the gatekeepers to ensure compliance are effective in achieving the objectives of the DMA and of the relevant obligations as required by Article 8 of the DMA; and
- content and presentation of the non-confidential summary of the compliance report that the gatekeepers must provide pursuant to Article 11(2) of the DMA in order to ensure that the summary enables third parties to provide meaningful input to the Commission on the gatekeeper's compliance with its obligations under the DMA.

The stakeholders' feedback will enable the Commission to prepare a finalised version of the template. The Commission may regularly update this template to request further information, which it expects gatekeepers to provide.

How to provide feedback

Please submit your contribution by 5 July 2023 (midnight). Your submissions should not include any confidential information. Your non-confidential submissions will be published on the Commission's website for the Digital Markets Act.

Your answers can be in any EU language.

Template for the compliance report

[DMA template - Compliance report consultation.pdf](#)

Your details

* Publication of your details

- ☐ I agree to the publication of my details along with my contribution
- ☒ My contribution should be published anonymously.

Privacy statement

[Consultation on DMA compliance report template privacy notice.pdf](#)

* Your first name

* Your family name

* Your organisation

* Your email address

Your contribution

You can insert a text and/or upload your contribution.

Type in your contribution (3000 characters maximum)

3000 character(s) maximum

Our response to the consultation can be found in the attached document in the form of proposed changes to the reporting template proposed by the Commission. Our suggestions for improvement are self-explanatory and aim to ensure that the reporting obligations enable regulators and interested parties to have sufficient information to assess compliance of gatekeepers with the Digital Markets Act.

Please upload your contribution.

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Contact

EC-DMA@ec.europa.eu

TEMPLATE FOR REPORTING PURSUANT TO ARTICLE 11 OF REGULATION (EU) 2022/1925 (Digital Markets Act)

Date of last update: XXX

The Commission may regularly update this template to request further information which it expects gatekeepers to provide. In particular, the Commission may require specific testing, or indicators and measures to verify whether a gatekeeper has demonstrated effective compliance with a specific obligation laid down in Articles 5 to 7 of Regulation (EU) 2022/1925. Gatekeepers should therefore refer to the latest version of this template available on the Commission’s website for the Digital Markets Act (see [link here](#)).

INTRODUCTION

Pursuant to Article 8(1) of Regulation (EU) 2022/1925, the gatekeepers shall demonstrate effective compliance with the obligations laid down in Articles 5, 6 and 7 of Regulation (EU) 2022/1925. Pursuant to Article 11 of Regulation (EU) 2022/1925¹, every gatekeeper shall provide, within 6 months after its designation pursuant to Article 3 of that Regulation, the Commission with a report describing, in a detailed and transparent manner, the measures that it has implemented to ensure compliance with the obligations laid down in Articles 5, 6 and 7 of that Regulation (the “Compliance Report”), and with a non-confidential summary of that report. Pursuant to Article 11(2) of Regulation (EU) 2022/1925, the gatekeeper shall update that report at least annually.

This template specifies the minimum information that the Commission expects gatekeepers to provide in the compliance reports required by Article 11 of Regulation (EU) 2022/1925.

The Commission considers that the provision by a gatekeeper of the true, correct and complete information that is listed in this template is necessary for its assessment of a gatekeeper’s compliance with Article 8(1) of Regulation (EU) 2022/1925. Failure by a gatekeeper to provide such true, correct and complete information may influence the Commission’s prioritisation in opening proceedings with a view to the possible adoption of a non-compliance decision pursuant to Article 29(1), point (a) of Regulation (EU) 2022/1925.

SECTION 1

Information about the reporting undertaking

- 1.1. Please provide the name of the undertaking submitting this report (the “Undertaking”).
- 1.2. Please provide the following information regarding the drafting of this report:
 - 1.2.1. identify the individuals responsible for drafting this report or parts thereof, specifying the role they hold within the Undertaking;
 - 1.2.2. provide contact details of any external legal or economic counsel or external

¹ Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act) (Text with EEA relevance), OJ L 265, 12.10.2022, p. 1.

technical experts (together “external counsel”) involved in drafting this report and indicate if they present guarantees similar to the approval requirements for monitoring trustees under EU merger control, in terms of independence, qualifications and absence of conflicts of interests²;

- 1.2.3. describe the approval process of this report within the Undertaking by identifying the steps for approval and, for each step, the individuals or bodies responsible for each of those steps (indicating their position within the Undertaking)
- 1.2.4. ~~indicate-describe~~ the role of the head of the compliance function, as provided for in Article 28 of Regulation (EU) 2022/1925, in the drafting and approval of this report.

SECTION 2

Information on compliance with the obligations laid down in Articles 5, 6 and 7

Information in this Section should be provided in separate and standalone annexes for each core platform service for which the Undertaking has been designated as a gatekeeper pursuant to Article 3 of Regulation (EU) 2022/1925.

- 2.1. For each core platform service for which the Undertaking has been designated as a gatekeeper pursuant to Article 3 of Regulation (EU) 2022/1925 and for each obligation laid down in Articles 5 to 7 of Regulation (EU) 2022/1925, please provide the following information:
 - 2.1.1. The following statement confirming compliance with the obligation in line with Article 8(1) of Regulation (EU) 2022/1925: ‘*[Name of the Undertaking] confirms that as of [DATE] it has ensured compliance with the obligation laid down in Article [reference to the Digital Markets Act article specifying the obligation] of Regulation (EU) 2022/1925*’.
 - 2.1.3. An detailed explanation of how you have assessed compliance with the obligation, including whether any assessment projects, such as external or internal audits have been carried out, and, for any such assessment project, provide information about the identity and the role of the people and advisory entities involved and whether they are independent from your Undertaking, the assessment methodology and timeline for the relevant assessment project, and any output (e.g. audit reports or compliance plans).
 - 2.1.2. An detailed explanation of how you comply with different aspects of the obligation, including any supporting data and internal documents, and a detailed description of any measures that were already in place pre-designation or that you have implemented post-designation and that ensure such compliance.

The description of all the above-mentioned measures must enable the

² In order to assess whether external counsels meet or not these characteristics, please refer to the conditions for approval of monitoring trustees under EU merger control as set out in paragraphs 123 to 127 to the Commission notice on remedies acceptable under Council Regulation (EC) No 139/2004 and under Commission Regulation (EC) No 802/2004 (2008/C 267/01). There is no obligation under the Digital Markets Act that compliance be monitored by external consultants meeting these conditions.

Commission to verify whether you have demonstrated compliance pursuant to Article 8(1) of Regulation (EU) 2022/1925 and should, at a minimum, include information (including, if applicable, data points) for each measure about:

- a) the relevant situation prior to implementation of the measure and how the measure ensures compliance with the obligations laid down in Articles 5 to 7 of Regulation (EU) 2022/1925;
- b) when the measure was implemented;
- c) the scope of the measure in terms of the products/services covered;
- d) the geographic scope of the measure (e.g. if the implementation of the measure extends beyond the EEA, please specify);
- e) any technical/engineering changes that were required for the implementation of the measure concerned (e.g. on data flows and internal data usage policies, security aspects, tracking of new metrics, Application Programming Interfaces (APIs), operation system (OS) functionalities, or parameters of ranking algorithms and online advertising auctions);
- f) any changes to the customer experience required by the implementation of the measure concerned (e.g. changes in the customer interface, choice screens, consent forms, warning messages, system updates, functionalities available, or customer journey to access functionalities);
- g) any changes to the terms and conditions for end users and business users required by the implementation of the measure concerned (e.g. on the fee structure, level of the fees, introduction of new fees, privacy policy, conditions for access and interoperability and any other relevant clauses);
- h) any other relevant changes required by the implementation of the measure concerned not covered by the above points e) to g);
- i) any consultation with end users and/or business users ~~that has been~~ carried out at-before, during and after the stage of the elaboration of the measure and an explanation of how their input has been taken into account;
- j) any involvement of external consultants in the elaboration of the measure including a description of the consultants' mission, whether they are independent from the Undertaking, and a description of their output;
- k) any alternative measures whose feasibility or implications has been assessed and the reasons for not choosing them;
- l) any action taken to inform end users and/or business users of the measure and their feedback;
- m) where applicable, the interaction with measures you have implemented to ensure compliance with other obligations under Regulation (EU) 2022/1925;

- n) where applicable, any actions taken to protect security or data pursuant to the relevant provisions in Regulation (EU) 2022/1925 and why these measures are strictly necessary and justified and there are no less restrictive means to achieve these goals, taking into account internationally recognised standards (e.g. ISO);
- o) any type of market analysis or testing, in particular A/B testing³ or consumer and business user surveys, that have been carried out to estimate the expected impact of the measure on the objectives of Regulation (EU) 2022/1925;
- p) any type of market analysis or testing, in particular A/B testing or consumer and business user surveys, that have been or are expected to be carried out to evaluate the actual impact or evolution of the impact of the measure on the objectives of Regulation (EU) 2022/1925;
- q) a set of measurable key performance indicators which allow or will allow based on their future evolution to assess whether the measures implemented by the Undertaking to ensure compliance are ‘*effective in achieving the objectives of this Regulation and of the relevant obligation*’, as required by Article 8 of Regulation (EU) 2022/1925, including an explanation why you think that these indicators are sufficient and the most relevant;
- r) any relevant data which can inform whether the measure is or will be effective in achieving the objectives of Regulation (EU) 2022/1925, such as, depending on the circumstances, data on the evolution of the number of active end users and active business users for the relevant core platform service and, for each relevant obligation, data on the evolution of the fees and revenue share for the relevant services, the interaction of end users with choice screens and consent forms, the amount of in-app purchases, the amount of pre-installed defaults, counts of end users who switch, counts of business users who obtain data access, etc.; and
- s) any internal systems and tools used to monitor the effectiveness of the measure and the output of such internal systems and tools.

2.1.5. A list and description of any reports, notices and warnings issued by the head of the compliance function to the management body of the gatekeeper in relation to risks of non-compliance within the meaning of Article 28(4) of Regulation (EU) 2022/1925 and of the management body’s replies to those reports, including a list and description of the measures envisaged and taken in response to those reports.

2.1.6 A list and a summary of any feedback (e.g. complaints) of your business users or end users, or their representatives, including their names, about the Undertaking’s compliance with the obligations. Where this feedback exceeds the number of ten instances, please group them to the extent possible (e.g. per topic). Please also provide an explanation of any action that you have taken based on this feedback.

³ A/B testing is an experiment where the audience is randomly split to test a number of variations of a measure and determine which performs better. A/B testings and consumer surveys may be particularly well-suited to

demonstrate: (i) compliance with obligations which include a change to an end-user interface and (ii) the absence of dark patterns, which could jeopardize the effectiveness of the proposed measure.

- 2.2. A list of the gatekeeper's core platform service's top ~~ten~~thirty business users based on revenues established in the EEA for the last year as defined in Article 2(21) of and in the Annex to Regulation (EU) 2022/1925 and, for these business users, the name, address, telephone number, and e-mail address of the head of their legal department (or other person exercising similar functions; and in cases where there is no such person, the chief executive officer).
- 2.3. If applicable, the reasons why you consider that a specific obligation laid down in Articles 5 to 7 of Regulation (EU) 2022/1925 cannot, by nature, apply to the Undertaking's relevant core platform service.

SECTION 3

Information about compliance function and monitoring

- 3.1. With respect to the compliance function provided for under Article 28 of Regulation (EU) 2022/1925, please provide the following information:
 - 3.1.1. a description of the compliance function (including the composition, allocation of tasks, position within the Undertaking, reporting lines, activities in particular with respect to the elaboration and monitoring of the measures described in Section 2.1.2 and how the compliance function's role is explained in the Undertaking's annual report);
 - 3.1.2. contact details of the head of the compliance function, including name, address, telephone number and e-mail address and an explanation of how it is ensured that this person is an independent senior manager with distinct responsibility for the compliance function as required by Article 28(3) of Regulation (EU) 2022/1925;
 - 3.1.3. a list of any compliance officers other than the head of the compliance function, including an explanation of how it is ensured that they have the professional qualifications, knowledge, experience and ability necessary to fulfil the tasks referred to in Article 28(5) of Regulation (EU) 2022/1925; and
 - 3.1.4 an explanation whether and why you consider that the compliance function is independent from the operational functions of the gatekeeper and whether and why you deem it to have sufficient authority, stature and resources, as well as access to the management body of the gatekeeper to monitor the compliance of the gatekeeper with Regulation (EU) 2022/1925.
- 3.2 With respect to the strategies and policies for taking up, managing and monitoring the compliance with Regulation (EU) 2022/1925 as provided for under Article 28(8) of Regulation (EU) 2022/1925, please provide the following information:
 - 3.2.1. a description of the content of these strategies and policies (including e.g. information on internal staff trainings on compliance) and of any major changes compared to the previous periodic review by the gatekeeper's management body; and

- 3.2.2. copies of all internal documents approved by the gatekeeper's management body in their most recent periodical review and the date, list of participants and any agenda or minutes for the meeting during which these internal documents have been approved.

SECTION 4

Non-confidential summary

- 4.1. Provide a detailed, clear and comprehensive non-confidential summary of Sections 1 to 3 of this report in line with the requirements in Article 11(2) and recital (68) of Regulation (EU) 2022/1925. The non-confidential summary must enable third parties to provide meaningful input to the Commission on the gatekeeper's compliance with its obligations under Regulation (EU) 2022/1925. To this end, the non-confidential summary should:

(i) comprise self-standing texts that give a faithful, detailed, comprehensive and meaningful picture of the report's content. Relevant information may be omitted in the non-confidential summary only if it constitutes the gatekeepers' business secrets or if the information is otherwise confidential.⁴

~~(ii)~~ ^{NEW} (ii) comprise an annex with a detailed summary of all internal and external audit reports or compliance plans and of any related findings and recommendations, without prejudice to the gatekeeper's business secrets or otherwise confidential information.

~~(iii)~~ (iii) follow the same structure as the report, all headings should be visible and all sections and sub-sections should be covered.

~~(iv)~~ (iv) Specifically for Section 2 of the present template, the non-confidential summary should be provided in separate and standalone annexes for each core platform service for which the Undertaking has been designated as a gatekeeper pursuant to Article 3 of Regulation (EU) 2022/1925.

The Commission intends to publish the non-confidential summaries on its website for the Digital Markets Act (https://digital-markets-act.ec.europa.eu/index_en).

SECTION 5

Declaration

The submission and each submitted annex should conclude with the following declaration, which should be signed by or on behalf of the gatekeeper:

'[Name of the Undertaking], as a gatekeeper, declares that, to the best of its knowledge and belief, the information given in this submission is true, correct, and complete, that all estimates are identified as such and are its best estimates of the underlying facts, and that all the opinions expressed are sincere.'

For digitally signed forms, the following fields are for information purposes only. They

⁴ On the type of information which may be considered as 'business secrets and other confidential information' that the gatekeepers can take into account for the purpose of the 'clear and comprehensible non-confidential summary' that will be made 'publicly available' in line with recital (68) of Regulation (EU) 2022/1925, the criteria may be similar to those contained in the Commission's guidance in relation to antitrust and mergers

procedures: https://ec.europa.eu/competition-policy/document/download/ea2cbf27-412c-4394-b872-dd4b4e3a840b_en; https://ec.europa.eu/competition-policy/system/files/2021-03/guidance_on_preparation_of_public_versions_mergers_26052015.pdf.

should correspond to the metadata of the corresponding electronic signature(s).

Date:

[signatory 1]

Name:

Organisation:

Position:

Address:

Phone number:

E-mail:

["e-signed" / signature]