

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.

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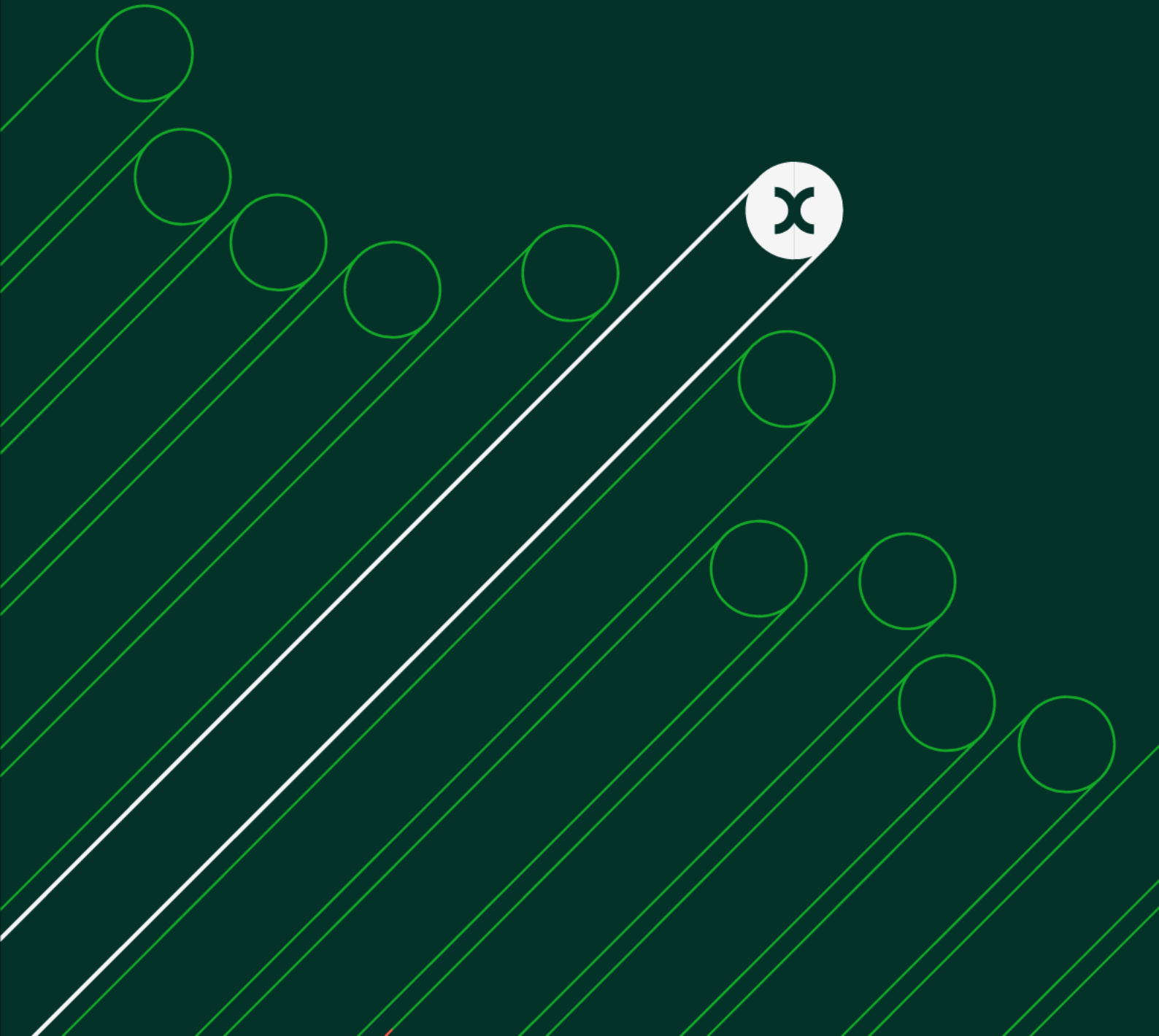
EC-DMA@ec.europa.eu

Response to the consultation on the DMA
template for compliance reports



Oxera response

5 July 2023



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Oxera welcomes the consultation by the European Commission (Commission) regarding the draft template for the compliance report that designated gatekeepers will have to submit under the Digital Markets Act (DMA).¹ We found that the draft template includes useful information requests and offers helpful initial guidance to gatekeepers. However, we note that certain requests may be based on a wrong premise, and should be clarified.

We have made three observations.

First, the initiative to include analytical evidence to substantiate the evidence on compliance is welcome. The draft template includes explicit references to A/B testing and consumer and business user surveys, as well as other types of market analysis to help the Commission verify whether the measures put in place are compliant with the DMA provisions. Although we consider that in some cases a description of the measures put in place should be sufficient, such additional analyses, tests and surveys will be useful to demonstrate compliance with certain provisions (e.g. Article 6(5)). When required, it is key to ensure that any such analysis is conducted in an economically robust manner.

The template also notes that A/B testing and consumer surveys should be used to prove the absence of dark patterns.² We welcome this initiative, as dark patterns may nudge consumers towards a particular decision based on website design, therefore potentially impacting the effectiveness of the implementation of the DMA. Demonstrating the absence of dark patterns requires the use of behavioural economics, to understand the mechanisms through which users might be nudged. In addition, the Commission should be mindful that there is no such thing as neutral online choice architecture. Any change introduced by a gatekeeper will benefit some business users and disadvantage others, without necessarily implying that a dark pattern is in place. Further guidance should be provided to market players on what is a problematic change, as opposed to an appropriate change that improves the market overall.

Second, the template compliance report suggests that the analyses to be submitted could be used to assess the impact of the measures on the objectives of the DMA, i.e. contestability and fairness in digital markets. We consider that this question should have no bearing on the

¹ European Commission (2023), '[TEMPLATE FOR REPORTING PURSUANT TO ARTICLE 11 OF REGULATION \(EU\) 2022/1925 \(Digital Markets Act\)](#)' (henceforth referred to as 'Template').

² Template, fn. 3.

Commission's assessment of the compliance measures, which should be disentangled from the assessment of the effects of the regulation. This is particularly true, because the objectives of the DMA are not defined separately for each provision, and their exact interpretation may differ significantly from one provision to the other. Without further specification of the objectives of fairness and contestability at the level of the single provision, there is significant uncertainty on what bar the gatekeepers must meet, if any.

Instead, we consider that these analyses should be used to test outcomes and processes against well-defined counterfactuals, separately for each provision, assuming compliance with the letter and in line with the spirit of the text.

Third, we consider that the request to provide data on the evolution of key performance indicators (KPIs) may be useful for the Commission to monitor the impact of the regulation on digital markets. However, the evolution of these KPIs should not be used to inform the Commission's assessment of gatekeepers' compliance. The value and evolution of KPIs focussing on market outcomes are the result of several factors, only one of which may relate to compliance. If the KPIs do not evolve 'as expected' (yet to be defined), this could mean any of the following:

- 1 that the obligations/prohibitions are not sufficient to counter the intrinsic characteristics of the market (e.g. network effects and scale economies);
- 2 that the objectives/expected outcomes are ill-defined;
- 3 that the gatekeeper increased the quality/competitiveness of its offering;
- 4 that the gatekeeper is not compliant.

To conclude, we recommend to focus the compliance report template on information and analyses/tests that are meaningful to assess compliance, not on KPIs focussing on market outcomes. To the extent that the Commission wishes to gather other data/indicators on the evolution of the markets as part of the compliance reports, in order to monitor the evolution of digital markets, the template would benefit from clearly indicating that the collection of these data/indicators will not be used to assess compliance. As these data/indicators are irrelevant to assess compliance with the various provision, it would also be useful to clarify that these data/indicators do not need to be included in the non-confidential summaries that gatekeepers should prepare, to enable third parties to provide meaningful input to the Commission on the gatekeeper's compliance with its obligations.

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Contact

[Redacted contact information]

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