

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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Your contribution

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Type in your contribution (3000 characters maximum)

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please see attached file

Please upload your contribution.

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Contact

EC-DMA@ec.europa.eu

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

4 July 2023

2.1.1. and following

please note the incorrect numbering here

2.1.1. to 2.1.3

This is great, but we think the value of this part of the template could be enhanced if you ALSO require gatekeepers (with greater clarity) to provide information on how they did NOT comply with the DMA obligations prior to their assessment of compliance, so before they took any measures to make their services DMA compliant. This will have the benefit of getting insight into the areas in which gatekeepers were not compliant just prior to their changes. This will help you by pointing towards areas to pay particular attention to with these gatekeepers: the areas in which they were very non-compliant before may merit additional checks to evaluate if their changes are adequate – likely they will try to change only minimal amounts, and you will have to judge if that is enough. It will also help you by letting you know what areas gatekeepers tend to be non-compliant in, in general, which will help with your evaluations of other gatekeepers now and in the future.

We are aware that this is currently described in section 2.1.2.a with the words “the relevant situation prior to implementation of the measure”, but we think it would increase the value of the template if this request for information is expanded and formulated more explicitly. We suggest the following order of items under 2.1:

2.1.1. The following statement confirming compliance with etc

2.1.2. An explanation of how you have assessed compliance with the obligation etc

2.1.3. (*new*) An exhaustive description of the results of the compliance assessment(s), including detailed descriptions of (all) the (different) way(s) in which the obligation was NOT met, met or partially met prior and up to the compliance assessment, so before any measures were undertaken to make your service conform with the obligation.

2.1.4 (*new*) A description of the changes you have made to become compliant with the obligation.

2.1.5 An explanation of how you NOW comply with the obligation, including any supporting data and internal documents, ... etc

- 2.1.6 A list and description of any reports issued by the head of the compliance function to the management body of the gatekeeper ... etc
- 2.1.7 A list and a summary of any feedback (e.g. complaints) of your business users or end users, including their names, ... etc

Section 4, point (iii)

Suggestion to revise this point (iii) to:

(iii) 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, **with subheadings within these Annexes for each of the obligations laid down in Articles 5 to 7 of Regulation (EU) 2022/1925.**

With the goal of getting detailed information from gatekeepers on each obligation.

Section 4, point (iv)

Suggestion to add a point (iv) to Section 4 along that reads:

(iv) For each of the subheadings, in each of the Annexes as described in (iii), please describe A) how each obligation corresponding to a subheading was NOT met, met or partially met prior and up to the compliance assessment, B) a description of the changes you have made to become compliant, C) an explanation of how you NOW comply with the obligation.

Other notes

Note on compliance assessments

We suggest to add a note to the template on the compliance assessments that gatekeepers need to provide info on. What some gatekeepers may want to do is conduct a compliance assessment → fix a lot of things → then do another compliance assessment, and then only report the 2nd compliance assessment to make it seem like they were always compliant. This would withhold possible valuable information from you (as described above, on how gatekeepers were previously non-compliant) and would not be fair. To prevent this, perhaps wording along the following lines could be admitted in a note to the template:

When 'compliance assessment' is mentioned in this template we mean: for your organization's first report pursuant to article 11 of Regulation (EU)

2022/1925 (Digital Markets Act) in 2023/2024, any and all compliance assessments that have been conducted about your organization's compliance with this article, by yourself, by a party you have contracted, or by an independent party whose assessment you are aware of, in the two years preceding your submission of this report. For any subsequent reports after the initial report, 'compliance assessment' will be taken to mean any and all compliance assessments that have been conducted about your organization's compliance with article 11 of Regulation (EU) 2022/1925 (Digital Markets Act), by yourself, by a party you have contracted, or by an independent party whose assessment you are aware of, between the date of submission of the previous report and the current report, plus any aspects of previous reports of which the EC has informed you that they have not been adequately made compliant with the DMA.

Components, aspects and subservices of core platform services

In addition, we wonder if this template might be further improved by requiring more explicitly and in more detail that gatekeepers are exhaustive in their descriptions and listings. We know you require gatekeepers to be "complete" in several areas of the template, but we doubt if this will be enough, especially with regards to the many components, aspects and subservices that a core platform service may have.

To exemplify this, consider for Google the "Google Play Store", which might be designated a core platform service. However, the Google Play Store in reality consists of a number of components, aspects and sub-services that are all separately relevant to the obligations in the DMA and for which DMA compliance would be judged differently, and that all combine to form the Play Store. These include:

1. the end-user facing app store application for Android called "Play Store"
2. the database of apps that the end-user facing app gives access to (we are unsure if this database has a name)
3. Google's developer-facing interface for uploading apps to Google's database of Android apps, the "Google Play Developer API"
4. Google's payment system for premium apps that require a one-time or subscription fee
5. Google's payment system for in-app purchases
6. And likely other components, aspects, or subservices

The same applies to the Android operating system, which has many components, aspects, and subservices. And the same applies to things like the "Google Play Services" and "Google Mobile Services", which in fact have many services as even described in their names. To see how relevant this is, see for example this large list of the services that exist within Google Play Services:

<https://code.tutsplus.com/android-from-scratch-google-play-services--cms-26040a>.

Some of these may be DMA compliant, but many others are currently used by Google to keep applications from functioning on competitors' Android-based operating systems – which is not compliant with the DMA. It will be a good idea to require Google to ask to describe their compliance with the obligations in the DMA separately for each of these subservices in the Google Play Services. If this is not done, Google may choose to speak broadly about the Google Play Services and what it does to be DMA compliant for these Services, while skipping over a lot of non-compliance for components.

In addition to speaking about a core platform service in broad terms, while in reality there are many relevant components to that service, a gatekeeper could be non-exhaustive by describing only one or several component(s) of a core platform service that are compliant with an obligation, when asked for that core platform service's compliance with that obligation, but omitting other components that are non-compliant. The gatekeeper in this case has been truthful in its answer, but has not been complete/exhaustive. For example, when asked to describe if the Google Play Store complies with obligation X, Google might answer that indeed it does because the user-facing application does, while omitting to describe that the "Google Play Developer API" and payment systems that are also a part of the Google Play Store do not.

We think there could be various solutions to address this potential risk of lacking exhaustiveness. First, the EC could try to be as exhaustive as possible in its definition of the core platform services by defining these at a highly granular level. So not the "Google Play Store", but the various components, aspects and subservices that are part of the Google Play Store (e.g. as described above). Or not the "Google Play Services", but precisely describing all the subservices with the Google Play Services as listed in the link we provided above. However, this approach may be highly laborious and technically challenging in terms of completeness / exhaustiveness.

We also think that merely requiring gatekeepers to be 'exhaustive' or 'complete' in their descriptions and answers, as is currently done in some sections of your template, will provide too much room and risk for gatekeepers to omit key components in their reports. For example, will Google list how it meets its obligations for each of the subservices in Google Play Services, unless they are specifically asked to do so? We don't think so. Simultaneously it is important that they do, because we know that Google is DMA-compliant in some of the subservices of Google Play Services, but not in (many) others.

Therefore, we propose that the best and simultaneously most feasible approach is to put this responsibility – of listing the relevant subservices, components and/or aspects – on gatekeepers. This has the additional benefit that they are also in the position to know their own service best, so are best positioned to provide such an overview, which then will be easier to evaluate for you (as opposed to you

developing the overviews). We propose to achieve this by adding an article before the current article 2.1:

(new) 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, please provide a listing of the relevant components, aspects, or subservices that are a part of the core platform service, including a brief description of their function. By 'relevant components, aspects, or subservices' we mean any component, aspect or subservice that:

(a) has been distinctly described as a component, aspect or subservice of the core platform service on your website, in other documentation by your organization, by the EC, or in other relevant online or offline documentation,

(b) is distinguishable from other components, aspects, or subservices within the core platform service in that the obligations as set out in Articles 5 to 7 of Regulation (EU) 2022/1925 apply differently to them than to other components, aspects, or subservices of the core platform service, or in that your reporting in answer to sections 2.2.2. to 2.2.8 below would be different for this component, aspect or subservice than for others.

We would then propose that the current section 2.1. be changed to 2.2. and be amended to read:

2.2 For each component, aspect, and subservice of each core platform service as described in 2.1, and for each core platform service overall, in so far this has not been covered yet by provided information for its components, aspects and subservices, please provide the following information for each obligation laid down in Articles 5 to 7 of Regulation (EU) 2022/1925 :

2.2.1. The following statement confirming ... etc

We would also suggest that in the designation decision that is sent to each gatekeeper you might give one or two examples of components, aspects, and subservices of core platform services, to be abundantly clear to them the granularity at which you want them to report (e.g. not Google Play Services overall, but each individual service in Google Play Services with two examples from the list we shared earlier in this document).

Furthermore, following from the above, we would also propose that Section 4, point (iii), is further amended (in addition to our earlier suggestion for this point) to:

(iii) 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, **with subheadings for each relevant component, aspect, and subservice as described in 2.1, and subsubheadings for each of the obligations laid down in Articles 5 to 7 of Regulation (EU) 2022/1925.**

Small note on asking for confirmation of compliance

Finally, on a sidenote (but not so important), we note that the current section 2.1.1. only refers to the Undertaking and to a specific obligation. It does not make mention of a specific core platform service. It might therefore be simpler to move this section to Section 1, and ask gatekeepers to confirm compliance once for each obligation as applied to all core platform services. (Unless it was your intention to ask for such a compliance statement for each core platform service separately, but then the current section 2.1.1. should perhaps be amended to make mention of the relevant core platform service.)

Thank you for your consideration of these suggestions.