

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 family name

* Your organisation

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Your contribution

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Contact

EC-DMA@ec.europa.eu

Response to the European Commission's Consultation on the template for compliance report under the DMA



5 July 2023

1 Introduction

This brief note sets out four observations on the template for compliance report under the DMA. The views expressed in this note are the author's and do not necessarily represent the views of other Compass Lexecon colleagues or those of Compass Lexecon's clients.

2 Paragraphs 2.1.2.q-r – indicators and data

While quantitative indicators and data can inform the assessment of the effectiveness of the changes implemented, some risks remain that may limit the usefulness of these. I set out two concerns below, each of which could be dealt with by adding further text to the template.

1. The text requires a judgement from the gatekeeper on whether an indicator or data point is informative on whether the measure implemented by the gatekeeper is or will be effective in achieving the objectives of the DMA. To the extent that there is a risk that no or limited change in the indicators and data would be viewed as evidence for non-compliance, gatekeepers have limited incentives to put forward such indicators or data points for assessing the impact of the measures. More broadly, it would be useful to acknowledge (either as part of the compliance template or elsewhere) that the lack of quantitative impact on outcome measures does not necessarily mean non-compliance. A gatekeeper could take all necessary steps to comply with the obligations and still achieve no impact, simply because the obligation itself proves to be ineffective. It is important to communicate such possibility to gatekeepers and to the broader set of stakeholders so that the Commission and the gatekeepers can continue working towards a solution together.
2. While the text requires "relevant" data and indicators, it does not specify exactly how these should be determined (over what time period, expressed in relative or absolute terms, purchases in volume or value, definitions of terms such as 'active' or 'interaction with choice screen', etc.). It seems sensible to leave flexibility for gatekeepers to determine the most appropriate indicators for their specific case. However, at the minimum, the template should require that the gatekeeper provides an exact definition of the terms and explains the calculations in detail. This will allow the Commission to understand the figures and data presented without (many) follow-up questions, and also potentially to compare the indicators and data proposed by different gatekeepers to measure impact. The template could also contain a requirement for the gatekeeper to justify why a particular metric is likely to be the most suitable for measuring impact (e.g. the reasons for looking at volume vs.

value shares), which should limit the possibility of cherry-picking metrics that show a higher level of impact.

3 **Section 4 – Non-confidential summary**

I agree that it will be useful to publish the non-confidential information contained in the compliance reports. I have two related observations on this section.

1. The text should contain a requirement that for indicators included in the compliance report that show a proportion, the gatekeepers must specify the percentage and the percentage-point change in the non-confidential summary. In order for the public to be able to form a clear view about the effectiveness of implemented measures, it is important to include *both* the percentage and the percentage-point change. This is because with a low baseline level, a large increase in percentage terms may suggest a significant impact, whereas in absolute terms the change may not be material. For instance, if the proportion of end users switching away from the gatekeeper's service for a given time period increased from 0.5% to 1%, that is a 100% increase in relative terms, but only a 0.5%-point increase in absolute terms.
2. Similarly, to the extent possible given confidentiality constraints, gatekeepers should report on the baseline level for indicators measured in absolute terms (e.g. number of end users carrying out a particular action) as reporting the change in itself (either in absolute or in percentage terms) may not be very informative without context.