

# 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

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### \* Publication of your details

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- ☒ My contribution should be published anonymously.

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### \* Your first name

### \* Your family name

### \* Your organisation

### \* Your email address

## Your contribution

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## **Contact**

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## Consultation on the template for compliance reports under the DMA

We welcome the consultation on the template for reporting pursuant to article 11 of the Digital Markets Act (DMA). The content and transparency of reporting by gatekeepers is a critical factor in the success of the DMA in addressing the problem behaviours that impact competitiveness and consumer choice within digital markets. It is crucial that reporting by gatekeepers properly enables the regulator to evaluate, and the wider market to understand, how gatekeepers are complying with the obligations detailed in articles 5, 6 and 7 of the DMA. Some of the key factors for effective reporting are set out below.

### Specificity about how obligations are complied with in specific use cases

Section 2 requires a list of the information that gatekeepers must provide per core platform service, for each obligation in Article 5, 6 and 7. However, many, if not all, the obligations have multiple different potential applications in a multitude of different use cases. The usefulness of the information provided in Section 2 correlates directly with how specific the gatekeeper is required to be to a particular behaviour or use case.

To give just one example, Article 6.7 requires that: *The gatekeeper shall allow providers of services and providers of hardware, free of charge, effective interoperability with, and access for the purposes of interoperability to, the same hardware and software features accessed or controlled via the operating system or virtual assistant listed in the designation decision pursuant to Article 3(9) as are available to services or hardware provided by the gatekeeper.* There are countless ways in which gatekeepers currently contravene this obligation and they are highly unlikely to remedy all of them. They may take steps to remedy those on which they are specifically required to report.

We welcome that, per the box at the top of the template, *the Commission may require specific testing, or indicators and measures to verify whether a gatekeeper has demonstrated effective compliance with a specific obligation.* However, this needs to be the norm. The Commission needs to direct individual gatekeepers to report on their compliance with specific obligations in specific use cases that it has been made aware of, in advance of the compilation of the compliance reports. It must do so with the agreement of business users that have raised these use cases to ensure that commercial sensitivity and confidentiality considerations are respected.

### Comparative illustrations of business or end user journeys

Much of the information required in the template is in the form of lists, descriptions or numeric data. In many cases visual representations of the journey that business or end users must follow in order to provide, install, subscribe to, switch to or utilise a competing product are key to understanding the impediments that exist. We strongly recommend the inclusion of visual illustrations (e.g. screenshots, recordings) of gatekeeper and competitor journeys in the information that is required in Section 2 of the template.

### Confidentiality protections for non-gatekeeper companies

We welcome Section 2.1.6 of the template that requires gatekeepers to list feedback or complaints from business or end users about their compliance with DMA obligations. Where this involves naming or otherwise identifying business users, it should be the business user

and not the gatekeeper that determines whether the relevant information should be included in the non-confidential version of the report. Issues raised with one gatekeeper company may for instance, create sensitivities in relation to another.

There will be many business users that do not provide feedback or complaints to gatekeeper companies due to the imbalance of power and extensive potential for reprisals, this is why it is so critical, as outlined above, for the Commission to direct individual gatekeepers to report on their compliance with specific obligations in specific use cases and to do so in ways that respect confidentiality considerations.

### **Sufficient transparency on gatekeeper actions**

The commercial sensitivities in relation to gatekeepers and the business users who depend on them are very different. Gatekeepers should of course be permitted to protect business secrets, but they do not suffer from the imbalance of power and, sometimes existential, dependence on other companies' core platform services as routes to market that create such commercial sensitivity for business users. Gatekeepers should be required to publish non-confidential versions (not summaries) of their compliance reports that omit only their business secrets and, as outlined above, identifying information that business users request to have omitted from the reports.