

# 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

- ☒ I agree to the publication of my details along with my contribution
- ☐ 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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**Comments on: TEMPLATE FOR REPORTING PURSUANT TO ART 11 OF REGULATION (EU) 2022/1925  
(Digital Markets Act)**

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Thank you for the opportunity to comment on this Template. The reporting obligations found in Art 11 are important for a successful implementation of the DMA and the proposed Template does well to clarify what is required.

**General Comments**

The compliance report should be seen as a document that changes when economic conditions change or when new risks and vulnerabilities are spotted. A firm that complies with rules has a system to ensure continued compliance. This requires the gatekeeper to be responsive and adapt its conduct. From this perspective the practice of compliance described in the template is not to be seen as an added burden on a gatekeeper as such: it describes processes one would expect of a gatekeeper that complies with the obligations. However, at the same time, one does not want to see the gatekeeper being overburdened by the duty to make multiple filings and to report in excessive detail, so a balance should be struck between the importance of these reports for supervision and the costs that gatekeepers face in writing up these reports. The reporting obligation should also be seen in the context of other powers the Commission has to secure information set out in Chapter V.

A lot of information is requested for each obligation, but two related suggestions may be made to optimize this: (a) for some obligations (e.g. Art 5.2) relatively less detail is required to evidence compliance than for some others (e.g. Art 6.2) – this suggests that the Template could require relatively less information for some obligations than others. (b) Conversely, some of the items listed in the Template (e.g. Section 2.1.2(i), discussed below) seem very valuable and the text might be revised so that there is an expectation that the information is provided and that the gatekeeper should explain why it chooses not to provide it.

It should be clear that there is a legal basis for the reporting obligations that are set out in the Template: as will be seen below I am not always sure that there is one.

**Specific Comments**

My comments below are in the order in which the points are made in the Template.

Prefatory statement: “The Commission may regularly update this template to request further information which it expects gatekeepers to provide.” - This is legitimate in the early days as everyone tries to grapple with the best way of securing adequate compliance, but I wonder if this could be made less random: a gatekeeper should have a reasonable expectation that the compliance report remains valid and sufficient for a given period of time. I am sure the intention is not to request continuous revision of a compliance report simply because the Template is amended. My sense is that a gatekeeper should feel confident that they have discharged their obligations for a year when they submit a complete report. It would be legitimate to ask for more information after a year if the Template changes.

Related: how does the requirement to publish a report link to the possibility of a specification decision under Art 8? Can this be an issue that could be clarified in this Template? Art 8(3) provides that a specification decision may be requested for intended measures: does this mean that the duty to report can be delayed until there is a specification from the Commission?

Introduction para 1: “the gatekeeper shall update that report at least annually.” Could this be modified to: at least annually “or whenever it makes any significant revision to its compliance strategy.” If a gatekeeper realizes via its internal monitoring processes that compliance may be more effective with a different approach or that the current approach can be safely modified without infringing the DMA then it should make changes to its practices but this requires a revision of the report. Likewise if a gatekeeper submits a compliance report and then requests a specification decision, the revision should be made quickly after that decision.

Section 2.1.2 (d): geographic scope. Might it be that the DMA requires different behaviour in the EU Member States, if for example conditions of demand differ then there could be differentiated compliance that is justified. Conversely, query whether it is useful (or legitimate) to know if the conduct is applied outside the EU unless this as an effect on the EU.

Section 2.1.2 (i): any consultation with end users and/or business users that has been carried out at the stage of the elaboration of the measure and how their input has been taken into account – I agree this is useful. Can the document somehow suggest that this is expected for example by asking that a gatekeeper explains why it has chosen not to consult with end users and or business users? It may be that for some obligations this is not necessary because what is required is clear but that for others there may be different options which could be market tested. Generally, Art 5 obligations may not require any or the same degree of consultation as Art 6 obligations.

Section 2.1.2 (k): alternatives. This is interesting but it could be disproportionate to ask a gatekeeper for all of many alternatives so perhaps an account of a set of reasonable alternatives which were considered might be preferable and more manageable.

Section 2.1.2 (o) and (p): the examples of tests identified here seem to fit better with section (k) or (i).

Section 2.1.1 (q): while I agree that having output indicators can be helpful in DMA enforcement, I am not sure that having gatekeepers define these and have them form part of a submission is the right way to go about this. The Commission should have a reasonable expectation of the likely impact of the DMA on markets. Moreover the indicators should allow for some comparison among gatekeepers of the same CPS, so the Commission should be doing this, not the gatekeepers.

Section 2.1.6: while knowing about complaints can be useful, I am not certain how this can be requested under Art 11. It could be requested if the gatekeeper’s compliance includes a complaints management system and then one wants data on how well this operates. For example, one might imagine this would make sense in B2CPS relations for example, on the basis of Art 5(6) DMA in which case reporting on how this system works could legitimately be seen as relevant information based on Art 11.

Section 2.2: as above, while useful I am not sure requesting this is within the scope of Art 11 obligations.

Section 3: I am uncertain if the gatekeeper has an obligation to respond to many of the requests here. There are some reporting obligations in Art 28 but besides giving names it is not clear to me that there is a legal basis for requesting the rest of the information set out here – one does not need to know how compliance is organized in order to determine if the gatekeeper in fact complies. Having said that, a gatekeeper would do well to provide this information because it reveals a commitment to compliance.