

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 first name

* Your family name

* Your organisation

* Your email address

Your contribution

You can insert a text and/or upload your contribution.

Type in your contribution (3000 characters maximum)

3000 character(s) maximum

Please be referred to the attachment.

Please upload your contribution.

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Contact

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Linklaters' reply to the European Commission consultation on the template for compliance report under the DMA

- (1) Linklaters LLP appreciates the opportunity to participate in the public consultation launched by the European Commission (the “**Commission**”) on the template compliance report (the “**report**”) under the DMA.

I. Section I: Declaration concerning external counsel

- (2) Section 1.1.2 stipulates that designated firms must provide ‘*contact details of any external legal or economic counsel or external technical experts (together “external counsel”) involved in drafting this report and indicate if they present guarantees similar to the approval requirements for monitoring trustees under EU merger control.*’
- (3) The purpose of this provision is unclear. If the intent is to ensure that the Commission knows the provenance of studies or analyses submitted alongside the report, the requirement should be redrafted to stipulate that this is the case. Otherwise, Section 1.1.2 simply creates an obligation to disclose anyone who has contributed to the report but with no requirement to identify the relevant parts for which they were responsible.

II. Section II: Tailoring the compliance report

A. The report should be future proofed to accommodate new and long-term gatekeepers

- (4) The report is tailored to the current situation where gatekeepers are expected to change their business models to comply with the DMA’s obligations following designation. In particular, a number of sections relate to how the designated firm has altered its business model to comply with the Act’s obligations (i.e. Sections 2.1.2 a) to h)).
- (5) However, in the medium term, the report will serve two functions: (A) facilitating the reporting of firms and services that have been gatekeepers for a significant period of time (and which presumably will be in compliance with the Act and hence are not making changes to their business model) and (B) facilitating the reporting of firms and services that are newly designated (and therefore may need to make changes).
- (6) We would recommend that questions relating to new gatekeepers be listed in a separate section which would only be relevant for new gatekeepers. This will reduce the administrative burden on gatekeepers and the Commission. It will also make the non-confidential version of the report more accessible to third parties, who would otherwise have to review a range of irrelevant material in relation to long-term gatekeepers.

B. The report should distinguish between compliance and effectiveness of the measures adopted to comply with the Act

- (7) Section 2.2 of the report mixes and matches questions concerning: (A) the measures that a designated firm has implemented to comply with the obligations and (B) information pertaining to whether the measures are achieving the intended purpose of the Act and the relevant obligation.
- (8) The primary purpose of the report is for designated firms to ‘*describe in a detailed and transparent manner the measures it has implemented to ensure compliance*’. Furthermore, the obligations under Article 5 of the Act are more prescriptive than the obligations under Article 6 and Article 7 which allow for a greater range of potential implementation measures.

- (9) As such, we would recommend that the report distinguishes between the two sets of questions. In the instance, such a distinction makes the questions in the report easier to follow as well as making clearer the core requirements of the Act. In the second instance, it reflects that the questions pertaining to the efficacy of a designated firm's compliance measures are more likely to be relevant for [Article 6](#) and [Article 7](#).

C. There is scope to streamline the questions in the report

- (10) A number of the questions listed in [Section 2.1.2](#) of the report are at the very least partially overlapping with one another or request the same or similar information from designated firms, in particular:
- [Section 2.1.2 r](#)) requests "*any relevant data which can inform whether the measure is or will be effective in achieving the objectives of*" the Act while [Section 2.1.2 q](#)) requires a "*set of indicators which allow or will allow to assess whether the measures implemented are effective in achieving the objectives of*" the Act.
 - [Section 2.1.2 o](#)) and [Section 2.1.2 p](#)) both require details of '*market analysis or testing*' for compliance with the Act's objectives (the difference being that the former requests details of analysis that the designated firm has completed while the latter requests analysis that designated firm intends to conduct).
- (11) The Commission may want to consider whether the report is overly prescriptive in its questions and whether it would be better to have more open-ended questions to avoid unnecessary administrative burden on both designated firms and the Commission as well as cater for the different positions of designated firms (where some of the more prescriptive questions are likely to prove superfluous depending on the circumstances).

III. Section III: Confidentiality over employee and counsel information

- (12) While it is important that third parties become aware of the rights and accesses stemming from gatekeeper compliance with the DMA, there should be additional safeguards in place to limit the personal information made available in the non-confidential summary (Section 4).
- (13) In particular, information provided about compliance officers' professional background, knowledge and experience should be specifically excluded in the summary as this information would constitute personal data under the GDPR and therefore require specific treatment by the Commission and the gatekeeper (the data processor and controller in this case). There is, furthermore, no compelling reason why such information should be disclosed publicly.
- (14) Accordingly, to protect this personal data we would recommend that the template report expressly excludes sections 1.2.2 and 3.1.3 from the non-confidential summary.

Brussels, 5 July 2023