

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
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* Your family name

* Your organisation

* Your email address

Your contribution

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3000 character(s) maximum

Art 5.3 of the DMA prohibits gatekeepers to prevent business users from offering the same products or services to end users through third-party online intermediation services or through their own direct online sales channel at prices or conditions that are different from those offered through the services of the gatekeeper.

Such practices, commonly referred to as “most-favored nation clauses” (MFNs), can rapidly distort competition on the online retail market as internet makes it very easy for consumers to compare prices and to rapidly take a decision. As such they are already deemed illicit under competition law. However, some major players in the online retail market are still using their market power to disincentivize or even prevent third-party sellers from offering better conditions on other platforms.

A significant number of online sellers have confided to being pressured, when it comes to pricing policy, by one of the main players in the online retail market, which is likely to qualify as a gatekeeper under the DMA: when offering their products for lower prices or under better terms on other platforms, they are penalized by being given a less prominent visibility for their products, excluded from commercial events or even suspended from the platform.

In absence of any explicit clause, these practices are very difficult to prove: sanctions may intervene simultaneously with the appearance of a lower price on another platform or with the crawling of such prices by the main player, making it difficult to seize and prove the direct link between the change in the seller's pricing policy and the corresponding sanction. Moreover, sellers are reluctant to complain before authorities in fear of retaliation.

Additionally, these practices raise the general level of prices on the market since sellers are disincentivized from selling at lower price on other platforms or channels, thus harming consumers.

The broad prohibition laid down by the DMA against MFN clauses could put an end to such practices if properly enforced. Concretely, minor adjustments to the compliance reports could actually support the Commission's finding of such non-compliant practices. The following information (pre and post-designation) should be disclosed by gatekeepers as part of the compliance report (paragraph 2.1.2):

- Information about provisions and practices related to the sellers' pricing policy (under point (g));
- Information about ranking algorithms and methodologies used to rank, classify or make more prominent business user's listings or offers on the platform (such as giving them access to the Buy Box) (under point (e));
- Information about any crawling activities on other platforms used to rank, classify, make more prominent or downgrading business user's listings or offers on the platform (such as giving or removing access to the Buy Box) (under point (e)).

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Contact

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