(Legislative acts)

REGULATIONS

I

REGULATION (EU) 2022/1925 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

September 14, 2022

on contestable and fair markets in the digital sector and amending the Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Regulation)

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

Following transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee (1),

Having regard to the opinion of the Committee of the Regions (2),

In accordance with the ordinary legislative procedure (3),

Considering the following:

(1) Digital services in general and online platforms in particular play an increasingly important role. important for the economy, especially in the internal market, by enabling businesses to reach users across the Union, facilitating cross-border trade and offering completely new business opportunities to a large number of businesses in the Union for the benefit of Union consumers.

(2) At the same time, among these digital services, core platform services exhibit a number of features that can be exploited by companies providing such services. An example of such features of core platform services are extreme economies of scale, which often arise from the near-zero marginal costs of adding business users or end users. Other similar features of core platform services include very strong network effects, an ability to connect many business users to many end users thanks to the multi-stakeholder nature of the services.

(1) OJ C 286 of 16.7.2021, p. 64. (2)
OJ C 440 of 29.10.2021, p. 67.
(3) Position of the European Parliament of 5 July 2022 (not yet published in the Official Journal) and decision of the Council of 18 July 2022.

of these services, a significant degree of dependency of business users and end-users, lock-in effects, lack of multi-connection for the same purpose by end-users, vertical integration and data advantages. All these features, combined with unfair practices by undertakings providing core platform services, may have the effect of substantially undermining the contestability of core platform services as well as affecting the fairness of the commercial relationship between undertakings providing such services and their business users and end-users. In practice, this leads to a rapid and potentially extensive decrease in choice for business users and end-users and may therefore confer on the provider of such services the position of a “gatekeeper”. At the same time, it should be recognised that services acting for non-commercial purposes, such as collaborative projects, should not be considered as core platform services for the purposes of this Regulation.

(3) A small number of large undertakings providing core platform services have accumulated significant economic power, which could qualify them to be designated as gatekeepers under this Regulation. They typically have the ability to connect many business users to many end-users through their services, which in turn enables them to shift their advantages, such as their access to large amounts of data, from one area of activity to another. Some of these undertakings control entire platform ecosystems in the digital economy and existing or new market operators, no matter how innovative and efficient they may be, find it extremely difficult, for structural reasons, to compete with them or contest the market. Contestability is reduced in particular by the existence of high barriers to market entry or exit, such as high investment costs, which cannot be recovered, or at least not easily, in the event of exit, and the absence of, or limited access to, some key inputs in the digital economy, such as data. As a result, the likelihood that underlying markets will not perform well or will soon stop performing well increases.

(4) The combination of these characteristics of gatekeepers is likely to lead, in many cases, to serious imbalances in bargaining power and, consequently, to unfair practices and conditions for business users as well as end-users of the core platform services provided by gatekeepers, to the detriment of prices, quality, fair competition, choice and innovation in the digital sector.

(5) It follows that market dynamics are often unable to ensure fair economic outcomes with respect to core platform services. Although Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU) apply to the conduct of gatekeepers, the scope of those provisions is limited to certain cases of market power (e.g. dominance in specific markets).
and anti-competitive behavior, and compliance control occursex postand requires extensive case-by-case investigation of often very complex facts. Furthermore, existing EU law does not address, or at least not effectively, the challenges to the efficient functioning of the internal market posed by the conduct of gatekeepers that are not necessarily dominant in terms of competition law.

(6) Gatekeepers have a major influence on the internal market, as they provide gateways for a large number of business users to reach end-users anywhere in the Union and in different markets. The negative impact of unfair practices on the internal market and the low contestability of core platform services, including the negative social and economic consequences of such unfair practices, have prompted national legislators and sector regulators to act. A number of regulatory solutions have already been adopted at national level or proposed to address unfair practices and contestability of digital services, or at least with respect to some of them. This has created divergent regulatory solutions, leading to fragmentation of the internal market and thus increasing the risk of increased compliance costs due to the existence of different sets of national regulatory requirements.

(7) The objective of this Regulation is therefore to contribute to the smooth functioning of the internal market by laying down rules to ensure contestability and fairness of markets in the digital sector in general and to ensure them for business users and end-users of core platform services provided by gatekeepers in particular. Business users and end-users of core platform services provided by gatekeepers should be provided with appropriate regulatory safeguards across the Union against unfair practices by gatekeepers in order to facilitate commercial activities.

1. The aim of this Regulation is to enable the gatekeepers to make cross-border transactions within the Union easier, thereby improving the proper functioning of the internal market, and to eliminate existing or potentially emerging fragmentation in the specific areas to which this Regulation applies. Furthermore, while gatekeepers tend to adopt global or at least pan-European business models and algorithmic structures, they may also adopt, and in some cases have done so, different business conditions and practices in different Member States, which may create disparities in the conditions of competition for users of the core platform services provided by gatekeepers, to the detriment of the integration of the internal market.

(8) By approximating divergent national laws, it is possible to remove obstacles to the freedom to provide and receive services, including retail services, within the internal market. Accordingly, a harmonised set of legal obligations should be established at Union level to ensure contestability and fairness of digital markets with the presence of gatekeepers in the internal market for the benefit of the Union economy as a whole and ultimately of Union consumers.

(9) Fragmentation of the internal market can only be effectively prevented if Member States are prevented from applying national rules falling within the scope of this Regulation and pursuing the same objectives. That does not exclude the possibility of applying to gatekeepers within the meaning of this Regulation other national rules pursuing other legitimate public interest objectives, as set out in the TFEU, or overriding reasons of general interest recognised in the case-law of the Court of Justice of the European Union ('the Court of Justice').

(10) At the same time, since this Regulation is intended to complement the enforcement of competition law, it should apply without prejudice to Articles 101 and 102 TFEU, to relevant national competition rules and to other national competition rules concerning unilateral conduct based on an individualised assessment of market positions and behaviour on the market, including their actual or potential effects and the precise scope of the prohibited conduct, and providing for the possibility for undertakings to submit reasoned justifications as to the efficiency and objectives of the conduct in question, and to national rules on merger control. However, the application of those rules should not affect the obligations imposed on gatekeepers under this Regulation or their uniform and effective application in the internal market.

(11) Articles 101 and 102 TFEU and the relevant national competition rules on multilateral and unilateral anti-competitive conduct and merger control aim to protect undistorted competition on the market. This Regulation pursues a complementary but distinct objective to that of protecting undistorted competition on a given market, as defined in competition law, which is to ensure that markets where gatekeepers are present are and remain contestable and fair, irrespective of the actual, potential or perceived effects on competition on a given market of the conduct of a particular gatekeeper to which this Regulation applies. This Regulation therefore aims to protect a legal interest different from that protected by those rules and should apply without prejudice to the application of those rules.

(12) This Regulation should also apply without prejudice to rules arising from other acts of Union law regulating certain aspects of the provision of services falling within the scope of this Regulation, in particular Regulations (EU) 2016/679 (4) and (EU) 2019/1150 (5) of the European Parliament and the

(4) Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

(5) Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 on promoting fairness and transparency for professional users of online intermediation services (OJ L 186, 11.7.2019, p. 57).

Council and a regulation on a single market for digital services, and Directives 2002/58/EC [6], 2005/29/EC [7], 2010/13/EU [8], (EU) 2015/2366 [9], (EU) 2019/790 [10] and (EU) 2019/882 [11] of the European Parliament and of the Council, and Directive 93/13/EEC [12] of the Council and of national rules implementing those Union acts.

(13) Low contestability and unfair practices in the digital sector are more frequent and pronounced for some digital services than for others. They particularly affect widespread and commonly used digital services, which mainly serve as direct intermediaries between business users and end-users and more often exhibit characteristics such as extreme economies of scale, very strong network effects, the ability to connect many business users to many end-users thanks to the multi-sided nature of the services, lock-in effects, lack of multi-connection or vertical integration. Such digital services are often provided by a single large company, or by a very small number of large companies. More often than not, such companies have established themselves as gatekeepers for business users and end-users, with far-reaching repercussions. In particular, they have acquired the ability to easily set commercial conditions unilaterally and in a way that is detrimental to their business users and end-users. It is therefore necessary to focus only on those digital services that are most widely used by business and end-users and for which concerns about poor contestability and unfair gatekeeper practices are most evident and pressing from an internal market perspective.

(14) In particular, online intermediation services, online search engines, operating systems, online social networks, video-sharing platform services, number-independent interpersonal communications services, cloud computing services, virtual assistants, web browsers and online advertising services, including advertising intermediation services, have the potential to affect a large number of end-users and businesses, leading to the risk of unfair commercial practices. They should therefore be included in the definition of core platform services and fall within the scope of this Regulation. Online intermediation services may also play a role in the field of financial services, and may act as an intermediary or be used to provide the services listed in a non-exhaustive manner in Annex II to Directive (EU) 2015/1535 of the European Parliament and of the Council [13]. For the purposes of this Regulation, the definition of core platform services should be technology-neutral and should be understood to include services provided on or through various media or devices, such as smart TVs or in-vehicle digital services. In certain circumstances, the concept of end-users should cover users who are traditionally considered as business users, but in certain situations do not use core platform services to supply products or services to other end-users, such as businesses that rely on cloud computing services for their own purposes.

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[6] Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ L 201, 31.7.2002, p. 37).

[7] Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 1017/2005.either2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive') (OJ L 149, 11.6.2005, p. 22).

[8] Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) (OJ L 95, 15.4.2010, p. 1).

[9] Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market and amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1079/2015.either1093/2010 and repealing Directive 2007/64/EC (OJ L 337, 23.12.2015, p. 35).

[10] Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the digital single market and amending Directives 96/9/EC and 2001/29/EC (OJ L 130, 17.5.2019, p. 92).

[11] Directive (EU) 2019/882 of the European Parliament and of the Council of 17 April 2019 on accessibility requirements for products and services (OJ L 151, 7.6.2019, p. 70).

[12] Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ L 95, 21.4.1993, p. 29).

[13] Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (OJ L 241, 17.9.2015, p. 1).

(15) The fact that a digital service is a core platform service does not in itself raise sufficiently serious concerns regarding contestability or unfair practices. Such concerns arise only where a core platform service constitutes a significant gateway and is operated by an undertaking with a strong influence in the internal market and an established and long-standing position, or by an undertaking which is likely to enjoy such a position in the near future. Therefore, the specific set of harmonised rules provided for in this Regulation should apply only to undertakings designated on the basis of those three objective criteria, and should only apply to the core platform services of such undertakings which individually constitute a significant gateway for business users to reach end-users. The fact that it is possible for a platform core service provider to mediate not only between business users and end users, but also between end users and end users (for example, in the case of number-independent interpersonal communications services) should not preclude the conclusion that such a provider is or could be an important gateway for business users to reach end users.

(16) In order to ensure the effective application of this Regulation to undertakings providing core platform services that are most likely to meet those objective requirements, and in cases where unfair practices reducing contestability are more widespread and have a greater impact, the Commission should be able to directly designate undertakings providing core platform services that meet certain quantitative thresholds as gatekeepers. In any case, such undertakings should be subject to a rapid designation procedure that should start once this Regulation becomes applicable.

(17) The fact that an undertaking has a high turnover in the Union and provides a core platform service in at least three Member States is a compelling indication that that undertaking has a high influence on the internal market. This is equally true where an undertaking providing a core platform service in at least three Member States has a very high market capitalisation or an equivalent fair market value. Therefore, an undertaking providing a core platform service should be presumed to have a high influence on the internal market where it provides a core platform service in at least three Member States and where the turnover achieved by its group in the Union is equal to or above a certain high threshold, or where the market capitalisation of the group is equal to or above a certain high absolute value. For undertakings providing core platform services that belong to undertakings not listed on a regulated market, the equivalent fair market value should be taken as a reference. The Commission should be able to use its powers to adopt delegated acts to develop an objective methodology for calculating that value.

A high turnover of a group obtained in the Union, coupled with a threshold number of users of core platform services in the Union, reflects a relatively large capacity to monetise those users. A high market capitalisation relative to the same number of users in the Union reflects a relatively large potential to monetise those users in the near future. This monetisation potential in turn reflects, in principle, the gateway position of the undertakings concerned. Both indicators also reflect the financial capacity of the undertakings concerned, including their ability to leverage their access to financial markets to strengthen their position. This may happen, for example, when this superior access is used to acquire other undertakings, a capacity which in turn has been shown to have potential negative effects on innovation. Market capitalisation may also reflect the expected future position and impact of the undertakings concerned on the internal market, even though the current turnover may be relatively low. The value of the market capitalisation should be based on a level reflecting the average market capitalisation of the largest companies listed on a regulated market in the Union over an appropriate period.

(18) While a market capitalization at or above the established threshold in the last financial year should give
While the presumption that a platform core service provider has a significant influence on the internal market is not supported, a sustained market capitalisation of the platform core service provider at or above the threshold for three or more years should be considered to further strengthen that presumption.

(19) Instead, there could be a number of factors relating to market capitalisation which would require an in-depth assessment in order to determine whether a platform core service provider should be considered to have a significant influence on the internal market. This could be the case where the market capitalisation of the platform core service provider in previous years was well below the threshold and the volatility of its market capitalisation over the period observed was disproportionate to the general volatility of the stock market or the trajectory of its market capitalisation compared to market trends was inconsistent with rapid and unidirectional growth.

(20) Having a very high number of business users relying on a core platform service to reach a very high number of monthly active end-users enables the undertaking providing that service to influence the operations of a large proportion of business users in its favour and indicates, in principle, that that undertaking constitutes an important gateway. The respective relevant levels for those numbers should be set in such a way that they represent a substantial percentage of the entire Union population, as regards end-users, and of the entire population of undertakings using core platform services, in order to determine the threshold for business users. Active end-users and business users should be identified and calculated in such a way as to adequately represent the role and scope of the specific core platform service in question. In order to provide legal certainty for gatekeepers, the elements for determining the number of active end-users and business users per core platform service should be set out in the Annex to this Regulation. Those elements may be affected by technical and other developments. The Commission should therefore be empowered to adopt delegated acts to amend this Regulation by updating the methodology and the list of indicators used to determine the number of active end-users and active business users.

(21) The undertaking providing the core platform service is in a strong and durable position in its operations or is likely to be in such a position in the future, in particular where the contestability of its position is limited. This is likely to be the case where that undertaking has provided a core platform service in at least three Member States to a very large number of business users and end-users over a period of at least three years.

(22) Those thresholds may be affected by market developments and technical developments. The Commission should therefore be empowered to adopt delegated acts in order to specify the methodology for determining whether the quantitative thresholds are met and to adjust it periodically to market developments and technical developments where necessary. Those delegated acts should not modify the quantitative thresholds set out in this Regulation.

(23) An undertaking providing core platform services should be able to rebut, in exceptional circumstances, the presumption that the undertaking has a significant influence on the internal market by demonstrating that, although it meets the quantitative thresholds set out in this Regulation, it does not meet the requirements for designation as a gatekeeper. The burden of proof that the presumption arising from having met the quantitative thresholds should not apply should fall on that undertaking. In its assessment of the evidence and arguments submitted, the Commission should only take into account those elements that are directly related to the quantitative criteria, in particular the influence of the undertaking providing core platform services on the internal market beyond revenue or market capitalisation, such as its size in absolute terms, and the number of Member States in which it is present; the extent to which the actual number of business users and end users exceeds the thresholds and the importance of the enterprise's core platform service, taking into account the overall scale of the core platform service activities concerned; and the number of years in which the thresholds have been reached.

Any economic justification seeking to enter into the market definition or to demonstrate efficiencies arising from a specific type of behaviour by the undertaking providing core platform services should be disregarded as it is not relevant for the designation as a gatekeeper. If the arguments put forward are not sufficiently substantiated because they do not manifestly call into question the presumption, the Commission should be able to reject the arguments within the 45 working day period provided for the designation. The Commission should be able to take a decision based on available information on the quantitative thresholds in case the undertaking providing core platform services obstructs the investigation by breaching the investigation measures adopted by the Commission.

(24) Provision should also be made for an assessment of the gatekeeper function of undertakings providing core platform services which do not meet all quantitative thresholds, in the light of the overall objective requirements that they have a significant influence on the internal market, act as an important gateway for business users to reach end-users and have or are likely to achieve a strong and lasting position in their operations. Where the undertaking providing core platform services is a small, medium-sized or micro-enterprise, the assessment should carefully consider whether that undertaking could substantially undermine the contestability of core platform services, given that this Regulation is primarily addressed to large undertakings with significant economic power, rather than to small, medium-sized or micro-enterprises.

(25) Such an assessment can only be made following a market investigation and taking into account quantitative thresholds. In its assessment, the Commission should pursue the objectives of preserving and promoting innovation and the quality of digital products and services, the extent to which prices are fair and competitive and the extent to which quality or choice for business users and end-users is or remains high. Specific elements of the core platform service providers in question can be taken into account, such as extreme economies of scale or scope, very strong network effects, data advantages, the ability to connect many business users to many end users due to the multi-stakeholder nature of these services, lock-in effects, lack of multi-connection, corporate conglomerate structure or vertical integration. In addition, very high market capitalisation, very high equity-to-earnings ratio or very high turnover from end users of a single core platform service can be used as indicators of the potential for such companies to have influence and tilt the market in their favour. Along with market capitalisation, high relative growth rates are examples of particularly relevant dynamic parameters for identifying core platform service providers that are likely to become established and endure. The Commission should be able to take a decision drawing adverse inferences from the available facts where the undertaking providing core platform services substantially obstructs the investigation by failing to comply with the investigative measures adopted by the Commission.

(26) A specific subset of rules should apply to undertakings providing core platform services that are likely to enjoy a strong and lasting position in the near future. The very specific characteristics of core platform services make them prone to achieve a market tilt in their favour: once an undertaking providing core platform service has achieved a certain advantage over its rivals or potential competitors in terms of size or intermediation power, its position could become unassailable and the situation could evolve to a point where it is likely to enjoy a strong and lasting position in the near future. Undertakings may try to induce this market tilt and establish themselves as gatekeepers by resorting to some of the unfair conditions and practices regulated under this Regulation. In such a situation, it seems appropriate to intervene before an irreversible market tilt occurs.

(27) However, such early intervention should be limited to imposing only those obligations that are necessary and appropriate to ensure that the services in question remain contestable and to avoid the qualified risk of unfair conditions and practices. Obligations that prevent the undertaking providing core platform services in question from enjoying an entrenched and durable position in its operations, such as those preventing leverage, and those facilitating switching and multi-connection, are more directly geared to this end. Furthermore, in order to ensure proportionality, the Commission should apply from that subset of obligations only those that are necessary and proportionate to achieve the objectives of this Regulation and should periodically review whether those obligations should be maintained, removed or adapted.

(28) Applying only those obligations that are necessary and proportionate to achieve the objectives of this Regulation should enable the Commission to intervene in a timely and effective manner, while fully respecting the proportionality of the measures considered. It should also reassure market participants, including potential participants, about the contestability and fairness of the services concerned.

(29) Gatekeepers should comply with the obligations set out in this Regulation in respect of each of the core platform services listed in the relevant designation decision. The obligations should apply taking into account the gatekeeper's conglomerate position, where applicable. In addition, it should be possible for the Commission to impose implementing measures on the gatekeeper by means of a

decision. Such implementing measures should be designed in an effective manner, taking into account the characteristics of core platform services and potential risks of circumvention, and in accordance with the principle of proportionality and the fundamental rights of the undertakings concerned as well as those of third parties.

(30) The complex and rapidly evolving technological nature of core platform services requires a regular review of the status of gatekeepers, including those that are expected to achieve a long-standing and established position in their operations in the near future. In order to provide all market participants, including gatekeepers, with the necessary certainty regarding the applicable legal obligations, it is necessary to set a timeframe for such regular reviews. It is also important to carry out such reviews on a regular basis and at least every three years. Furthermore, it is important to clarify that not every change in the facts on the basis of which an undertaking providing core platform services has been appointed as a gatekeeper should require a change in the appointment decision. A change will only be necessary if the change in the facts also leads to a change in the assessment. To determine whether this is the case, a case-by-case assessment of the facts and circumstances should be made.

(31) In order to safeguard the contestability and fairness of core platform services provided by gatekeepers, a set of harmonised rules should be provided in a clear and unambiguous manner in relation to those services. These rules are necessary to address the risk of harmful effects of gatekeeper practices, to the benefit of the business environment in the relevant services, of users and ultimately of society as a whole. Obligations relate to those practices that are considered to undermine contestability or to be unfair, or both, when taking into account the characteristics of the digital sector and which have a particularly negative direct impact on business users and end-users. It should be possible for the obligations set out in this Regulation to specifically take into account the nature of the core platform services provided. The obligations under this Regulation should not only ensure contestability and fairness with respect to the core platform services listed in the designation decision, but also with respect to other digital products and services where gatekeepers take advantage of their gateway position, which are often supplied or rendered alongside or in support of core platform services.

(32) For the purposes of this Regulation, contestability should relate to the ability of undertakings to effectively overcome barriers to entry and expansion and to compete with the gatekeeper on the basis of the intrinsic quality of their products and services. The characteristics of core platform services in the digital sector, such as network effects, significant economies of scale and data benefits, have limited the contestability of such services and related ecosystems. Such low contestability reduces the incentives to innovate and improve products and services for the gatekeeper, its business users, competitors and customers and therefore negatively affects the innovation potential of the broader online platform economy. The contestability of services in the digital sector may also be limited if there is more than one gatekeeper for a core platform service. This Regulation should therefore prohibit certain practices by gatekeepers that may increase barriers to entry or expansion and impose certain obligations on gatekeepers that aim to reduce such barriers. The obligations should also address situations where the gatekeeper's position has become so entrenched that competition between platforms is not effective in the short term, implying that there is a need to create or increase competition within the platform.

(33) For the purposes of this Regulation, unfairness should relate to an imbalance between the rights and obligations of professional users where the gatekeeper obtains a disproportionate advantage. Market participants, including professional users of core platform services and alternative providers of services provided in conjunction with or in support of such core platform services, should be able to adequately reap the benefits resulting from their innovative or other efforts. Due to their position as a gateway and their greater bargaining power, gatekeepers may engage in behaviours that do not allow others to fully reap the benefits of their own contributions, and unilaterally set unbalanced conditions for the use of their core platform services or services provided in conjunction with or in support of their core platform services. This imbalance is not excluded by the fact that the gatekeeper offers a particular service free of charge to a specific group of users, and may also consist of excluding or discriminating against professional users, in particular if the latter compete with the services provided by the gatekeeper.
This Regulation should therefore impose obligations on gatekeepers to address such behaviour.

(34) Contestability and fairness are interrelated. Lack of contestability or its scarcity in relation to a given service may allow a gatekeeper to engage in unfair practices. Similarly,
Unfair practices by a gatekeeper may reduce the possibility for professional users or third parties to challenge the gatekeeper's position. A specific obligation in this Regulation may therefore address both elements.

(35) Consequently, the obligations set out in this Regulation are necessary to address the public policy concerns identified, as there are no less restrictive alternative measures that can effectively achieve the same result, taking into account the need to safeguard public order, protect privacy and combat fraudulent and misleading commercial practices.

(36) Gatekeepers often directly collect personal data of end-users for the purpose of providing online advertising services when end-users use third-party websites and computer applications. Third parties also provide gatekeepers with personal data of their end-users in order to make use of certain services provided by gatekeepers in the context of their core platform services, such as those provided to custom audiences. The processing, for the purpose of providing online advertising services, of personal data of third parties using core platform services provides gatekeepers with potential advantages in terms of data aggregation, which creates barriers to market entry. This is because gatekeepers process personal data of a considerably larger number of third parties than other companies. Similar advantages arise from the practice of (i) combining end-user personal data collected from a core platform service with data collected from other services, (ii) using personal data from a core platform service in other services separately provided by the gatekeeper, in particular services that are not provided in conjunction with or in support of the relevant core platform service, and vice versa, or (iii) logging end-users into different gatekeeper services in order to combine personal data. To ensure that gatekeepers do not unfairly undermine the contestability of core platform services, gatekeepers should enable end-users to freely choose to engage in such data processing and login practices by offering them a less personalized, yet equivalent, alternative and without conditioning the use of the core platform service or certain functionalities thereof on the end-user's consent. This should not affect the processing of personal data or the login of end users to a service by the gatekeeper based on the legal basis provided for in Article 6(1)(c), (d) and (e) of Regulation (EU) 2016/679, but not in Article 6(1)(b) and (f) of that Regulation.

(37) The less customized alternative must not be different or have a degraded quality compared to the service provided to consenting end-users, unless the degradation in quality is a direct consequence of the gatekeeper being unable to process such personal data or log end-users into a service. Not providing consent should not be more difficult than providing consent. Where the gatekeeper asks for consent, it should proactively present the end-user with an easy-to-use solution for the end-user to provide, modify or withdraw consent in an express, clear and simple manner. In particular, consent should be provided by means of a clear affirmative action or statement establishing a freely given, specific, informed and unambiguous manifestation of agreement by the end-user, as defined in Regulation (EU) 2016/679. At the time of providing consent, and only where applicable, the end-user should be informed that not providing consent may result in a less personalised offer, but that otherwise the core platform service will remain unchanged and no functionality will be removed. Exceptionally, if consent cannot be provided directly to the gatekeeper's core platform service, end users should be able to provide consent through each third party service that makes use of that core platform service, in order for the gatekeeper to process personal data for the purpose of providing online advertising services.

Finally, it should be as easy to withdraw consent as it is to give it. Gatekeepers should not design, organise or operate their online interfaces in a way that misleads or manipulates end-users or otherwise substantially reduces or distorts their ability to freely give consent. In particular, gatekeepers should not be allowed to encourage end-users more than once a year to give consent for the same processing purpose for which they initially did not give or withdrew consent. This Regulation is without prejudice to Regulation (EU) 2016/679, including its implementing framework, which remains fully applicable with respect to any claim by data subjects relating to a violation of their rights under that Regulation.

(38) Minors deserve specific protection with regard to their personal data, in particular as regards the use of their personal data for the purposes of commercial communication or user profiling. The protection of minors online is an important objective of the Union and should be reflected in its applicable law. In this context, due account should be taken of a regulation on a single market for digital services. Nothing in this Regulation exempts gatekeepers from the obligation to protect minors under applicable Union law.

(39) In certain cases, for example by imposing contractual conditions, gatekeepers may restrict the ability of professional users of their online intermediation services to offer products or services to end-users on more favourable terms, including price, through other online intermediation services or their direct online sales channels. Where such restrictions relate to:
1.1.1 Restrictions on third-party online intermediation services, such as those provided by third-party online intermediation services, limit contestability between platforms, which in turn limits the choice of alternative online intermediation services for end-users. Where such restrictions relate to direct online sales channels, they unfairly limit the freedom of business users to use such channels. In order to ensure that business users of online intermediation services of gatekeepers are free to choose alternative online intermediation services or direct online sales channels and to differentiate the conditions under which they offer their products or services to end-users, it should not be acceptable for gatekeepers to limit the possibility for business users to choose to differentiate commercial conditions, including price. This restriction should apply to any measure having equivalent effect, such as increasing commission rates or suppressing offers by business users.

(40) In order to avoid further increasing their dependence on the core platform services provided by gatekeepers and in order to promote multi-connection, business users of such gatekeepers should be free to promote and choose the distribution channel they consider most appropriate to interact with any end-users that those business users have already acquired through the core platform services provided by the gatekeeper or through other channels. This should apply to the promotion of offers, including through a computer application of the business user, and to any form of communication and conclusion of contracts between business users and end-users. An end-user is considered to be an acquired end-user if it has already entered into a commercial relationship with the business user and, where applicable, the gatekeeper has been remunerated directly or indirectly by the business user for having facilitated the initial acquisition of the end-user by the business user. Such business relationships may involve payment or be free of charge (such as free trials or free service levels) and may have been established on the gatekeeper's core platform service or through any other channel. Furthermore, end users must also be free to choose offers from such business users and enter into contracts with them through the gatekeeper's core platform services, if applicable, or through a direct distribution channel of the business user or other indirect channel used by such business user.

(41) The ability of end-users to acquire content, subscriptions, features or other items outside the gatekeepers' core platform services should not be impaired or restricted. In particular, a situation where gatekeepers restrict end-users from accessing and using such services through a computer application running on their core platform service should be avoided.
For example, subscribers to online content acquired outside of a computer application, application store or virtual assistant should not be prevented from accessing such online content through a computer application running on the gatekeeper's core platform service simply because the content was acquired outside of such application, application store or virtual assistant.

(42) In order to safeguard a fair trading environment and protect contestability in the digital sector, it is important to safeguard the right of business users and end-users, including whistleblowers, to express their concern to any relevant administrative or public authority, including national courts, about unfair practices by gatekeepers that raise an issue of non-compliance with applicable Union or national law. For example, business users or end-users may wish to complain about different types of unfair practices, such as discriminatory access conditions, unjustified closure of business user accounts or unclear reasons for doing so.

delisting products. Any practice which prevents or makes it in any way difficult for such users to express concerns or to seek redress, for example by means of confidentiality clauses in agreements or other conditions set out in writing, should therefore be prohibited. This prohibition should be without prejudice to the right of business users and gatekeepers to set out the conditions of use in their agreements, including recourse to legal mechanisms for the handling of complaints and any recourse to alternative dispute resolution mechanisms or to the jurisdiction of special courts in accordance with Union and national law. This should be without prejudice to the role played by gatekeepers in combating illegal content online.

(43) Some of the services provided in conjunction with or in support of the relevant core platform services of the gatekeeper, such as identification services, web browser engines, payment services or technical services supporting the provision of payment services, such as payment systems for in-app purchases, are crucial for business users to be able to carry out their business activity and enable them to optimise their services. For example, all web browsers are based on a web browser engine, on which essential elements of the browser's functionality, such as speed, reliability and web compatibility, depend. When gatekeepers manage and enforce web browser engines, they are in a position to determine the functionality and rules applicable not only to their own web browsers, but also to competing web browsers and, in turn, to web applications. For that reason, gatekeepers should not use their position to require their dependent business users to use any of the services provided in conjunction with, or in support of, the core platform services by the gatekeepers themselves as part of the provision of services or supply of products by those business users. In order to avoid a situation where gatekeepers indirectly impose on business users their own services provided in conjunction with, or in support of, the core platform services, gatekeepers should further be prohibited from requiring end-users to use such services, where such a requirement is imposed in the context of the service provided to end-users by the business user using the gatekeeper's core platform service. The purpose of this prohibition is to protect the business user's freedom to choose alternative services to those provided by the gatekeeper, but it should not be interpreted as an obligation on the business user to offer such alternatives to its end-users.

(44) Requiring business users or end-users to subscribe to or register for any other core platform service of the gatekeeper listed in the designation decision or to reach the thresholds for active end-users and business users set out in this Regulation, as a condition for using, accessing or registering for a core platform service, provides gatekeepers with a means to attract and retain new business users and end-users for their core platform services by ensuring that business users cannot access a core platform service without at least registering or creating an account in order to receive a second core platform service. Such conduct also provides gatekeepers with a potential advantage in terms of data aggregation. As such, such conduct may create barriers to market entry and should be prohibited.

(45) The conditions under which gatekeepers provide online advertising services to business users, including both advertisers and publishers, are often non-transparent and opaque. This opacity is partly linked to the practices of a few platforms, but is also due to the high complexity of programmatic advertising today. The sector is considered to have become less transparent following the introduction of new privacy legislation. This often leads to a lack of information and awareness on the part of advertisers and publishers about the conditions of the online advertising services they engage and undermines their ability to switch online advertising service providers. Furthermore, the costs of online advertising services under these conditions are likely to be higher than they would be in a more fair, transparent and contestable platform environment. These higher costs are likely to be reflected in the prices that end-users pay for many everyday products and services that depend on the use of online advertising services. Transparency obligations should therefore require gatekeepers, upon request, to provide advertisers and publishers to whom they provide online advertising services with free information that enables both parties to understand the price paid for each of the different online advertising services provided within the relevant advertising value chain.

This information must be provided to the advertiser, upon request, for each advertisement, in relation to the price and commissions charged to that advertiser and, with the consent of the publisher that owns the inventory in which the advertisement appears, the remuneration received by that publisher that has given its consent. The daily provision of this information will allow advertisers to receive information with a level of detail sufficient to compare the cost of using the online advertising services of gatekeepers with the cost of using the online advertising services of other companies. In the event that some publishers do not consent to the provision of the relevant information to the advertiser, the gatekeeper must provide the advertiser with the information in a timely manner.

advertisers with information regarding the average daily remuneration received by such publishers for the relevant advertisements. The same obligations and principles for providing relevant information regarding the provision of online advertising services should apply to requests from publishers. Since gatekeepers may use different pricing models for the provision of online advertising services to advertisers and publishers – they may set, for example, a price per impression or per view, or on the basis of any other criteria – gatekeepers should also provide the method by which each of the prices and remunerations are calculated.

(46) In certain circumstances, a gatekeeper has a dual role: on the one hand, it is a provider of core platform services, providing its business users with a core platform service and possibly other services provided in conjunction with or in support of the core platform services; on the other hand, it competes or seeks to compete with those same business users in the provision or supply to the same end-users of the same or similar services or products. In such circumstances, a gatekeeper may take advantage of its dual role to use data generated or supplied by its business users in the course of the activities of those business users when using the core platform services, or services provided in conjunction with or in support of the core platform services, for the benefit of its own services or products. Business users' data may also include data generated or supplied in the course of the activities of its end-users. This may be the case, for example, where a gatekeeper offers an online marketplace or application store to business users and, at the same time, provides services as an online retailer or application provider. To prevent gatekeepers from unfairly benefiting from their dual role, it is necessary to ensure that they do not use aggregated or disaggregated data of any kind, which may include non-public anonymised and personal data, to provide similar services to their business users. This obligation should apply to the gatekeeper as a whole, including, but not limited to, its business unit competing with business users of a core platform service.

(47) Business users may also engage online advertising services from a core platform service provider for the purpose of supplying products and services to end users. In this case, it may be that the data is not generated in the core platform service but is provided to the core platform service by the business user or generated from its operations through the relevant core platform service. In some cases, the core platform service providing advertising may have a dual role: that of a provider of online advertising services and that of a provider of services competing with those of its business users. Therefore, the obligation prohibiting a dual-role gatekeeper from using business users' data should also apply in respect of data that a core platform service has received from businesses for the purpose of providing online advertising services related to that core platform service.

(48) As regards cloud computing services, the obligation not to use business user data should extend to data provided or generated by the gatekeeper's business users when using the gatekeeper's cloud computing service, or through its computer application store allowing end-users of the cloud computing services to access computer applications. That obligation should not affect the gatekeeper's right to use aggregated data for the provision of other services provided in conjunction with or in support of its core platform services, such as data analytics services, provided that the provisions of Regulation (EU) 2016/679 and Directive 2002/58/EC are complied with and the relevant obligations of this Regulation relating to those services are respected.

(49) A gatekeeper may use different means to favour its own or a third party's services or products on its operating system, virtual assistant or web browser, to the detriment of the same or similar services that end users could obtain through other third parties. This may occur, for example, when gatekeepers pre-install certain software applications or services. In order to provide the end user with choice, gatekeepers should not prevent end users from uninstalling any software application from their operating system. Gatekeepers should be able to restrict such uninstallation only when the applications in question are essential for the operation of the operating system or the device. Gatekeepers should also allow end users to easily change the default settings of the operating system, virtual assistant or web browser when they wish to do so.

such default settings favour their own computer applications and services. They may do so, for example, by causing a choice screen to appear at the time the user first uses an online search engine, virtual assistant or web browser of the gatekeeper listed in the designation decision, allowing end users to select an alternative default service when the gatekeeper's operating system directs end users to the aforementioned search engine, virtual assistant or web browser, or when the gatekeeper's virtual assistant or web browser directs the user to the online search engine listed in the designation decision.

(50) The rules that a gatekeeper establishes for the distribution of computer applications may, in certain circumstances, restrict the ability of end users to effectively install and use third-party computer applications or computer application stores on the operating systems or thehardware of such gatekeeper and restrict the ability of end users to access such software applications or software application stores outside of such gatekeeper's core platform services. Such restrictions may limit the ability of software application developers to use alternative distribution channels and the ability of end users to choose among different software applications from different distribution channels and should be prohibited because they are unfair and may undermine the contestability of the core platform services. To ensure contestability, the gatekeeper should also allow third-party software applications or software application stores to prompt the end user to decide whether such service should become the default service, and allow the change to be made easily.

To ensure that third-party software applications or software application stores do not compromise the integrity of thehardwareor the operating system provided by the gatekeeper, the gatekeeper concerned should be able to apply proportionate technical or contractual measures for this purpose if it demonstrates that such measures are necessary and justified and that there are no less restrictive means to safeguard the integrity of thehardwareor the operating system. The integrity of thehardwareor the operating system must include all the design options that need to be applied and maintained so that thehardwareor the operating system are protected against unauthorized access, ensuring that the security controls specified for the hardwareor the operating system concerned. Furthermore, in order to ensure that third-party software applications or software application stores do not undermine the security of end users, the gatekeeper should be able to apply strictly necessary and proportionate measures and adjustments that are not part of the default configuration and that allow end users to effectively protect security in relation to third-party software applications or software application stores, provided that the gatekeeper demonstrates that such measures and adjustments are strictly necessary and justified and that there are no less restrictive alternatives to achieve that objective. The gatekeeper should be prevented from including such measures in the default configuration or pre-installing them.

(51) Gatekeepers are often vertically integrated and offer certain products or services to end-users through their own core platform services, or through a business user over whom they exercise control, which often leads to conflicts of interest. This is the case where a gatekeeper provides its own online intermediation services through an online search engine. By offering those products or services on the core platform service, gatekeepers can reserve a better position for their own offering, as regards ranking and related indexing and crawling functions, than for third-party products or services also operating on that core platform service. This may occur, for example, with products or services, including other core platform services, that are ranked in online search engine results, or that are partially or fully integrated into online search engine results, groups of results specialized in a certain topic, displayed together with the results of an online search engine, which are considered or used by certain end users as a service distinct from or additional to the online search engine.

Other examples are computer applications distributed through computer application stores, videos distributed through video sharing platforms, products or services highlighted and displayed in the news section of an online social networking service, products or services ranked in search results or displayed in an online marketplace, or products or services offered through a virtual assistant. Gatekeepers can reserve a higher position for their own offer even before the ranking following a search, for example during crawling and indexing. Gatekeepers can thus reserve a higher position for their own offer.

Gatekeepers can favour their own content over that of third parties as early as the crawling phase, which is the process by which new and updated content is discovered, and during indexing, which consists of storing and organising the content found during the crawling process. In these cases, gatekeepers have a dual role as intermediaries for third-party companies and for companies that directly supply or provide products or services. Consequently, such gatekeepers have the ability to directly undermine the contestability of those products or services offered on these core platform services, to the detriment of professional users who do not control the gatekeepers.

(52) In such situations, gatekeepers should not grant any differentiated or preferential treatment, as regards classification in the core platform service and related indexing and crawling functions, whether through legal, commercial or technical means, to products or services that they offer directly or through business users under their control. To ensure that this obligation is effective, the conditions applying to such classification should also generally be fair and transparent. In this regard, Ranking should cover all forms of relative prominence, including display, rating, link generation or voice results, and should also cover cases where a core platform service presents or communicates to the end-user only one result. To ensure that this obligation is effective and cannot be circumvented, it should also apply to any measure having an equivalent effect to differential or preferential treatment in ranking. The guidelines adopted pursuant to Article 5 of Regulation (EU) 2019/1150 should also facilitate the implementation and enforcement of this obligation.

(53) Gatekeepers should not restrict or impede free choice by end-users by technically or otherwise preventing them from switching between software applications and services or subscribing to different software applications and services. This allows more companies to offer their services, which ultimately provides end-users with a greater choice. Gatekeepers should ensure free choice regardless of whether they are the manufacturer of any software or the provider of any other software.hardwarethrough which such computer applications or services are accessed and must not create artificial obstacles, technical or otherwise, so as to make switching impossible or ineffective. The mere offering of a particular product or service to consumers, including by pre-installation, as well as the improvement of what is offered to end users, such as price discounts or higher quality, must not be construed as a prohibited obstacle to switching.

(54) Gatekeepers may undermine the ability of end-users to access online content and services, including computer applications. Rules should therefore be laid down to ensure that the conduct of gatekeepers does not compromise the right of end-users to access an open internet. Gatekeepers may also technically limit the ability of end-users to effectively switch from one internet service provider to another, in particular through the control they exercise over the internet service provider.hardwareor operating systems. This distorts the level playing field for internet access services and ultimately harms end users. It must therefore be ensured that gatekeepers do not impose undue restrictions on end users in their choice of internet access service provider.

(55) Gatekeepers may provide services or supplyhardware,such as portable devices, which access the functions of thehardwareor thesoftwareof a device that is accessed or controlled through an operating system or a virtual assistant in order to offer specific functionalities to end users. In such a case, in order to be able to offer a competitive offer to end users, service providers or suppliers of hardware Competitors such as handheld device suppliers need equally effective interoperability with the same functionality.hardwareor ofsoftware,and access to such functions for interoperability purposes.

(56) Gatekeepers may also have a dual role as developers of operating systems and manufacturers of devices, in particular of any technical functionality that such devices may have.
For example, a gatekeeper who is a manufacturer of a device may restrict access to some of the functionality of that device, such as the security elements and secure processors of near field communication technology, authentication mechanisms, andsoftwareused to operate such technologies, which may be necessary to make effective the provision of a service provided in conjunction with or in support of a core platform service by the gatekeeper or any third party company providing such service.

(57) If such duality of functions is used in a way that prevents other service providers or suppliers fromhardwarehave access, on equal terms, to the same functions of the operating system,hardwareor of thesoftwarewhich may be accessed or used by the gatekeeper when providing its own services or supplying its ownhardwareIf the provision of complementary or supporting services is not possible, the innovation capacity of these other providers or suppliers could be significantly undermined, as well as the variety of options for end users. Gatekeepers should therefore be required to ensure, free of charge, effective interoperability with the same operating system functions, the same operating system functions, and the same operating system functions.hardwareor of thesoftwarewhich may be accessed or used by the gatekeeper when providing its own services or supplying its ownhardware complementary and supporting services, as well as access to such functions for the purposes of interoperability. Such access may also be required by IT applications related to the relevant services provided in conjunction with, or in support of, the core platform services, in order to effectively develop and offer functionalities that are interoperable with those offered by the gatekeepers. The objective of this obligation is to enable competing companies to connect via similar interfaces or solutions to the relevant functions as effectively as the services or the hardwareof the gatekeeper.

(58) The conditions under which gatekeepers provide online advertising services to business users, including both advertisers and publishers, are often non-transparent and opaque. This frequently leads to a lack of information for advertisers and publishers about the effect of a given advertisement. In order to further increase the fairness, transparency and contestability of the online advertising services listed in the designation decision, as well as those fully integrated into other core platform services of the same company, gatekeepers should, upon request, provide advertisers and publishers, and third parties authorised by advertisers and publishers, free of charge access to the gatekeepers' performance measurement tools and to the data – including aggregated and disaggregated data – necessary to enable advertisers, authorised third parties, such as advertising agencies acting on behalf of an advertising company, and publishers to carry out their own independent verification of the provision of the relevant online advertising services.

(59) Gatekeepers benefit from access to large amounts of data that they collect when providing core platform services as well as other digital services. In order to ensure that gatekeepers do not undermine the contestability of core platform services or the innovation potential of a dynamic digital sector by imposing restrictions on service switching or multi-connection, end-users as well as third parties authorised by an end-user should be granted immediate and effective access to the data they have provided or generated through their activity on the relevant core platform services of the gatekeeper. The data should be received in a format that allows the end-user or the relevant third party authorised by the end-user receiving the data to immediately and effectively access and use it. Gatekeepers should also ensure through appropriate and quality technical measures, such as application programming interfaces, that end-users or third parties authorised by end-users can freely port the data continuously and in real time. This should also apply to all other data at different levels of aggregation that are necessary to effectively enable such portability. For the sake of clarity, the obligation of the gatekeeper to ensure effective data portability under this Regulation is complementary to the right to data portability set out in Regulation (EU) 2016/679. Facilitating switching or multi-connection should, in turn, lead to greater choice for end-users, and serve as an incentive for gatekeepers and business users to innovate.

(60) Business users using core platform services provided by gatekeepers and end-users of such business users provide and generate a large amount of data. In order to ensure that business users have access to the relevant data generated in this way, gatekeepers should, upon request, provide effective and free access to such data. Such access should also be granted to third parties engaged by business users acting as processors of such data for business users. Access should include access to data provided or generated by the same business users and the same end-users of such business users in the framework of other services provided by the same gatekeeper, including services provided in conjunction with or in support of core platform services, if they are inextricably linked to the relevant request. To this end, gatekeepers should not use any contractual or other restrictions to prevent business users from accessing the relevant data and should enable business users to obtain consent from their end users to access and obtain the data, where such consent is required under Regulation (EU) 2016/679 and Directive 2002/58/EC. Gatekeepers should also ensure continuous and real-time access to such data by appropriate technical measures, for example, high-quality application programming interfaces or integrated tools for business users with a small volume of data.

(61) The value of online search engines for their respective business users and end-users increases as the total number of such users increases. Online search engine providers collect and store aggregated data sets containing information about users' searches and how they interacted with the results provided to them. Online search engine providers collect this data from searches performed on their own online search engine and, where applicable, from searches performed on the platforms of their business partners located downstream in the value chain. Access by gatekeepers to such data on rankings, queries, clicks and views constitutes a major barrier to market entry and expansion, which undermines the contestability of online search engines. Gatekeepers should therefore be required to provide access, on fair, reasonable and non-discriminatory terms, to such data on rankings, queries, clicks and views in relation to free and paid searches made by consumers on online search engines to other companies providing such services, in order to enable these third-party companies to optimise their services and to compete for the relevant core platform services. Such access should also be granted to third parties engaged by the providers of an online search engine who act as processors of such data for such online search engines. When providing access to their search data, gatekeepers should ensure the protection of end-users' personal data, in particular against potential risks of re-identification, by appropriate means, such as, for example, anonymisation of such personal data, without substantially degrading the quality or usefulness of the data. Relevant data are anonymised if the personal data are irreversibly altered in such a manner that the information no longer relates to an identified or identifiable natural person or where the personal data are anonymised in such a manner that the data subject is not or is no longer identifiable.

(62) As regards application stores, online search engines and online social networking services listed in the designation decision, gatekeepers should publish and apply general terms and conditions of access which are fair, reasonable and non-discriminatory. Such general terms and conditions should provide for an alternative dispute resolution mechanism located in the Union which is easily accessible, impartial, independent and free of charge for business users, without prejudice to costs incurred by business users and proportionate measures to prevent abuse of the dispute resolution mechanism by business users. The dispute resolution mechanism should be without prejudice to the right of business users to seek redress before judicial authorities in accordance with Union and national law. In particular, gatekeepers providing access to application stores are an important gateway for business users seeking to reach end-users. In view of the imbalance in bargaining power between such gatekeepers and professional users of their software application stores, such gatekeepers should not be allowed to impose general conditions, including pricing conditions, that are unfair or lead to unjustified differentiation.

Pricing or other general access conditions should be considered unfair if they lead to an imbalance between the rights of business users and the obligations imposed on them, give gatekeepers a disproportionate advantage in relation to the service they provide to business users, or disadvantage business users who provide services identical or similar to those offered by gatekeepers. The following benchmarks may serve as a criterion for determining the fairness of general access conditions: the prices charged or conditions imposed by other providers of computer application stores for identical or similar services; the prices charged or conditions imposed by the computer application store provider for different similar or related services or to different types of end users; the prices charged or conditions imposed by the computer application store provider for the same service in different geographical regions; the prices charged or conditions imposed by the computer application store provider for the same service that the gatekeeper provides to itself. This obligation should not establish a right of access and should be without prejudice to the ability of providers of computer application stores, online search engines and online social networking services to assume the required responsibility in combating illegal and unwanted content, as set out in a regulation on a single market for digital services.

(63) Gatekeepers may hinder the ability of business users and end-users to unsubscribe from a basic platform service to which they have previously subscribed. Rules should therefore be laid down to avoid a situation where gatekeepers undermine the rights of business users and end-users to freely choose the basic platform service they use.
In order to safeguard the free choice of professional users and end users, gatekeepers should not be allowed to make it unnecessarily difficult or complicated for professional users or end users.

Gatekeepers should ensure that the terms and conditions for termination of a core platform service are always proportionate and can be applied by end-users without undue difficulty, for example in relation to the reasons for termination, the notice period or the manner of such termination, without prejudice to applicable national law in accordance with Union law establishing rights and obligations in relation to the terms and conditions for termination of the provision of core platform services by end-users.

(64) The lack of interoperability allows gatekeepers providing electronic communications services to number-independent interpersonal electronic communications services benefit from significant network effects, which contribute to weakening contestability. In addition, even if end-users rely on multi-connection, gatekeepers often provide number-independent interpersonal electronic communications services within their platform ecosystem, further hampering the market entry of alternative providers of such services and increasing costs for end-users wishing to switch providers. Therefore, without prejudice to Directive (EU) 2018/1972 of the European Parliament and of the Council ([14]) and in particular the conditions and procedures set out in Article 61 thereof, gatekeepers must guarantee to third-party providers of number-independent interpersonal communications services, free of charge and upon request, interoperability with certain basic functionalities of such services that they offer to their own end users.

Gatekeepers should ensure interoperability for third-party providers of number-independent interpersonal communications services that provide or intend to provide their number-independent interpersonal communications services to end-users and business users in the Union. In order to facilitate the practical implementation of such interoperability, the gatekeeper concerned should be required to publish a reference offer setting out the technical details and general conditions for interoperability with its number-independent interpersonal communications services. The Commission should be able to consult, where appropriate, the Body of European Regulators for Electronic Communications in order to determine whether the technical details and general conditions published in the reference offer that the gatekeeper has implemented or intends to implement ensure compliance with that obligation.

In all cases, the gatekeeper and the provider requesting interoperability should ensure that interoperability does not undermine a high level of security and data protection, in line with their obligations under this Regulation and applicable Union law, in particular Regulation (EU) 2016/679 and Directive 2002/58/EC. The obligation regarding interoperability should be without prejudice to the information and choices to be made available to end-users of number-independent interpersonal communications services of the gatekeeper and the provider requesting interoperability under this Regulation and other acts of Union law, in particular Regulation (EU) 2016/679.

(65) In order to ensure that the obligations set out in this Regulation are effective and limited to what is necessary to ensure contestability and to address the harmful effects of unfair practices by gatekeepers, it is important to clearly define and circumscribe them so that gatekeepers can fully comply with them, in full compliance with applicable law and in particular Regulation (EU) 2016/679 and Directive 2002/58/EC, as well as legislation on consumer protection, cybersecurity, product safety and accessibility requirements, including Directive (EU) 2019/882 and Directive (EU) 2016/2102 of the European Parliament and of the Council ([15]). Gatekeepers must ensure compliance with this Regulation by design. Therefore, the necessary measures should be integrated to the greatest extent possible into the technological design used by gatekeepers.

([14]) Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (OJ L 321, 17.12.2018, p. 36).

([15]) Directive (EU) 2016/2102 of the European Parliament and of the Council of 26 October 2016 on the accessibility of websites and mobile applications of public sector bodies (OJ L 327, 2.12.2016, p. 1).

In some cases it may be appropriate for the Commission, after discussions with the relevant gatekeeper and allowing third parties to comment, to specify in more detail some of the measures that the gatekeeper should take in order to effectively comply with those obligations that can be specified in more detail or, in the case of circumvention, all obligations. In particular, such more detailed specification should be possible where the implementation of an obligation that can be specified in more detail may be affected by variations in services within a single category of core platform services. To this end, the gatekeeper should be able to request the Commission to initiate a process whereby the Commission can specify in more detail some of the measures that the gatekeeper should take in order to effectively comply with those obligations.

The Commission should be able to decide, at its discretion, whether and when to provide such a more detailed specification, while respecting the principles of equal treatment, proportionality and good administration. In this regard, the Commission should set out the main reasons on which it bases its assessment, including any enforcement priorities it has set. This process should not be used to undermine the effectiveness of this Regulation. Furthermore, the process is without prejudice to the Commission's powers to adopt a decision finding a gatekeeper in breach of the obligations laid down in this Regulation, including the possibility of imposing fines or periodic penalty payments. The Commission should be able to reopen a procedure, in particular where the specified measures prove ineffective. Where a procedure is reopened due to an ineffective specification adopted by a decision, the Commission should be able to amend the specification prospectively. The Commission should also be able to set a reasonable period within which a procedure may be reopened if the specified measures prove ineffective.

(66) As an additional element to ensure proportionality, gatekeepers should be given the opportunity to request the suspension, to the extent necessary, of a specific obligation in exceptional circumstances beyond the gatekeeper's control, such as an unforeseen external disruption temporarily eliminating a significant part of end-user demand for the core platform service concerned, where the gatekeeper demonstrates that compliance with a specific obligation jeopardises the economic viability of its operations in the Union. The Commission should determine the exceptional circumstances justifying the suspension and review it periodically to assess whether the conditions for its granting are still met.

(67) In exceptional circumstances, justified by limited reasons of public health or public security as set out in Union law and interpreted by the Court of Justice, the Commission should be able to decide that a given obligation does not apply to a given core platform service. The fact that such public interests are harmed may indicate that, in certain exceptional cases, the cost to society as a whole of enforcing a given obligation is too high and therefore disproportionate. Where appropriate, the Commission should be able to facilitate compliance by determining whether a suspension or a limited and duly reasoned exemption is justified. This should ensure the proportionality of the obligations set out in this Regulation without undermining the effects of the obligations imposed by this Regulation.ex anteprovisions on equity and contestability. Where such an exemption is granted, the Commission must review its decision annually.

(68) Gatekeepers should communicate to the Commission in their mandatory reports, within the deadline for the fulfilment of their obligations under this Regulation, the measures they have implemented or intend to implement to ensure effective compliance with those obligations, in particular measures relating to compliance with Regulation (EU) 2016/679, insofar as they are relevant to the fulfilment of the obligations laid down in this Regulation, which should enable the Commission to exercise its tasks under this Regulation. In addition, a clear, comprehensible and non-confidential summary of that information should be made publicly available, taking into account the legitimate interest of gatekeepers in the protection of their trade secrets and other confidential information. Such non-confidential publication should enable third parties to assess whether gatekeepers comply with the obligations laid down in this Regulation. That report should be without prejudice to any implementing measures adopted by the Commission at any time following the report. The Commission should publish online a link to the non-confidential summary of the report, as well as to other public information based on the reporting obligations under this Regulation, in order to ensure that such information is fully accessible and usable, in particular for small and medium-sized enterprises (hereinafter 'SMEs').

(69) The obligations of gatekeepers should only be updated following a thorough investigation into the nature and effects of specific practices which have recently been found, following a thorough investigation, to be unfair or to limit contestability in the same way as the unfair practices provided for in this Regulation and which could fall outside the scope of the existing set of obligations. The Commission should be able to initiate an investigation in order to determine whether an update of the existing obligations would be necessary, either on their own initiative or at the reasoned request of at least three Member States. When submitting such reasoned requests, Member States should be given the possibility to include information on offers of products, services,softwareor newly introduced functionalities that raise contestability or fairness concerns, whether or not they are applied in the context of existing core platform services. Where, following a market investigation, the Commission considers it necessary to amend essential elements of this Regulation, such as the inclusion of new obligations that deviate from contestability or fairness concerns already addressed by this Regulation, the Commission should submit a proposal to amend this Regulation.

(70) Given the significant economic weight of gatekeepers, it is important that the obligations are effectively enforced and that compliance with them is not circumvented. To that end, the rules concerned should apply to any practice of gatekeepers, regardless of the form they take or whether they are contractual, commercial, technical or any other practices, insofar as the practice corresponds to the types of practices that are subject to any of the obligations set out in this Regulation. Gatekeepers should not engage in behaviour that undermines the effectiveness of the prohibitions and obligations set out in this Regulation. Such behaviour includes the design used by the gatekeeper, the presentation of options to end-users in a non-neutral manner or the use of the structure, function or mode of operation of a user interface or part of it to disrupt or impair the autonomy, decision-making or choice of users. In addition,
The gatekeeper should not be permitted to engage in behaviour that undermines the interoperability required under this Regulation, for example by using unjustified technical protection measures, discriminatory terms of service, unlawful invocation of copyright in application programming interfaces or the provision of misleading information. Gatekeepers should not be permitted to avoid their designation by artificially segmenting, dividing, subdividing, fragmenting or separating their core platform services in order to circumvent the application of the quantitative thresholds set out in this Regulation.

(71) In order to ensure the effective review of gatekeeper status as well as the possibility of adjusting the list of core platform services provided by a gatekeeper, gatekeepers should inform the Commission, before making such acquisitions, of all their intended acquisitions of other undertakings providing core platform services or any other services provided in the digital sector or other services enabling data collection. Such information should be useful not only for the above-mentioned review process concerning the status of each gatekeeper, but is also crucial for monitoring more general contestability trends in the digital sector and may therefore be a useful factor to be taken into account in the framework of market investigations under this Regulation. The Commission should also transmit such information to the Member States, since it can be used for the purposes of national merger control and since, in certain circumstances, the national competent authority may refer such acquisitions to the Commission for merger control. The Commission should also publish annually the list of acquisitions of which it has been informed by the gatekeepers. In order to ensure the necessary transparency and usefulness of such information for the various purposes of this Regulation, the gatekeepers should provide at least information on the undertakings affected by the concentration, their annual turnover in the Union and worldwide, their scope of activity, including activities directly related to the concentration, the value of the transaction or an estimate of the value of the transaction, a summary of the concentration, including its nature and justification, and a list of the Member States affected by the transaction.

(72) The data protection and privacy interests of end-users are relevant to any assessment of the potential negative effects of the observed practice of gatekeepers to collect and accumulate large amounts of end-user data. Ensuring an adequate level of transparency on the profiling practices employed by gatekeepers, including but not limited to profiling within the meaning of point (4) of Article 4 of Regulation (EU) 2016/679, facilitates contestability in respect of core platform services. Transparency exerts external pressure on gatekeepers not to make in-depth profiling standard industry practice, as potential entrants or start-ups cannot access data to the same extent and depth, or on a similar scale. Increased transparency should enable other companies providing core platform services to better differentiate themselves by using enhanced privacy safeguards.

In order to ensure a minimum level of effectiveness in relation to this transparency obligation, gatekeepers should at least provide an independently audited description of the criteria on which the profiling is based, including whether it is based on personal data and data derived from user activity in line with Regulation (EU) 2016/679, the processing applied, the purpose for which the profile is prepared and ultimately used, the duration of the profiling, the impact of such profiling on the gatekeepers' services, and the measures taken to effectively inform end-users about the relevant use of such profiling, as well as the measures to request their consent or give them the possibility to refuse or withdraw it. The Commission should forward the audited description to the European Data Protection Board, in order to contribute to monitoring compliance with Union data protection rules. The Commission should be empowered to develop the methodology and procedure for the preparation of the audited description, in consultation with the European Data Protection Supervisor, the European Data Protection Board, civil society and experts, in accordance with Regulations (EU) No 1189/2008 and (EU) No 1189/2008.either182/2011 (16) and (EU) 2018/1725 (17) of the European Parliament and of the Council.

(73) In order to ensure the full and lasting achievement of the objectives of this Regulation, the Commission should be able to assess whether an undertaking providing core platform services should be designated as a gatekeeper without reaching the quantitative thresholds set out in this Regulation; whether systematic non-compliance by a gatekeeper justifies the imposition of additional corrective measures; whether more digital sector services should be added to the list of core platform services; and whether additional practices that are equally unfair and limit the contestability of digital markets should be investigated. Such an assessment should be based on market investigations carried out within an appropriate timeframe, using clear procedures and deadlines, in order to support the effective implementation of the Regulation.ex anteof this Regulation on contestability and fairness in the digital sector, and provide the necessary degree of legal certainty.

(74) Following a market investigation, the Commission should be able to establish that an undertaking providing a core platform service satisfies all the general qualitative criteria for being designated as a gatekeeper. That undertaking should then, in principle, comply with all the relevant obligations set out in this Regulation. However, for gatekeepers designated by the Commission as likely to enjoy an established and lasting position in the near future, the Commission should only impose on them such obligations as are necessary and appropriate to prevent the gatekeepers concerned from achieving an established and lasting position in their operations. With regard to such emerging gatekeepers, the Commission should take into account that their situation is in principle of a temporary nature, and therefore a decision should be made at a given point in time whether an undertaking providing core platform services should be subject to the full set of obligations applied to gatekeepers upon acquiring an established and lasting position, or whether the conditions for designation are ultimately not met and therefore all previously imposed obligations should cease to apply.

(75) The Commission should investigate and assess whether additional behavioural or, where appropriate, structural remedies are warranted to ensure that gatekeepers are not able to frustrate the objectives of this Regulation by systematically failing to comply with one or more of the obligations set out in this Regulation. This situation arises where the Commission has taken at least three infringement decisions against a gatekeeper within a period of eight years, which may relate to different core platform services and different obligations set out in this Regulation, and where the gatekeeper has maintained, expanded or strengthened its importance in the internal market, the economic dependence of its business users and end-users on its core platform services, or has strengthened its position. A gatekeeper should be deemed to have maintained, expanded or strengthened its position where, despite the implementing measures taken by the Commission, the gatekeeper continues to maintain or has continued to strengthen or strengthen its importance as a gateway for business users to end-users.

(16) Regulation (EU) No.either182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

(17) Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 1725/2018.either45/2001 and Decision No.either1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

The Commission should have the power in such cases to impose any corrective measure, whether behavioural or structural, taking due account of the principle of proportionality. In that context, provided that the corrective measure is proportionate and necessary to maintain or restore fairness and contestability that have been affected by the systematic non-compliance, the Commission should have the power to prohibit the gatekeeper, for a limited period of time, from taking part in a concentration concerning core platform services or other services provided in the digital sector or services enabling the collection of data that have been affected by the systematic non-compliance. In order to allow for the effective participation of third parties and the possibility of testing the corrective measures before their application, the Commission should publish a detailed non-confidential summary of the case and of the measures to be taken. The Commission should be able to reopen a procedure, in particular where the specified corrective measures prove ineffective. Where a procedure is reopened due to the ineffectiveness of the corrective measures adopted by a decision, the Commission should be able to amend those measures prospectively. The Commission should also be able to set a reasonable period within which it should be possible to reopen a procedure if the corrective measures prove ineffective.

(76) Where a gatekeeper, during an investigation into a systematic non-compliance, offers to enter into commitments with the Commission, the Commission should be able to adopt a decision converting those commitments into binding commitments for the gatekeeper concerned, if it considers that the commitments ensure effective compliance with the obligations under this Regulation. That decision should also state that the Commission no longer has grounds to act in respect of the systematic non-compliance under investigation. When assessing whether the commitments that the gatekeeper has proposed to enter into are sufficient to ensure effective compliance with the obligations under this Regulation, the Commission should be able to take into account evidence carried out by the gatekeeper to demonstrate the effectiveness in practice of those commitments. The Commission should check that the decision on the commitments is fully respected and achieves its objectives, and should be able to reopen the decision if it considers that the commitments are not effective.

(77) Services in the digital sector and the types of practices relating to such services can change rapidly and to a large extent. In order to ensure that this Regulation remains up to date and constitutes an effective and holistic regulatory response to the problems raised by gatekeepers, it is important to provide for a regular review of the lists of core platform services as well as the obligations under this Regulation. This is particularly important to ensure that a practice that is likely to limit the contestability of core platform services or is unfair is detected. Given that the digital sector is dynamically changing, while a regular review is important in order to ensure legal certainty as regards regulatory conditions, all reviews should be carried out within a reasonable and appropriate timeframe. Market investigations should also ensure that the Commission has a sound evidentiary basis to enable it to assess whether it should propose amending this Regulation to review, extend or elaborate the lists of core platform services. They should also ensure that the Commission has a sound evidentiary basis to assess whether it is appropriate to propose amending the obligations set out in this Regulation or to adopt a delegated act updating those obligations.

(78) As regards the conduct of gatekeepers to which the obligations set out in this Regulation do not apply, the Commission should be given the possibility to open a market investigation into new services and new practices with a view to determining whether the obligations set out in this Regulation should be supplemented by a delegated act falling within the scope of the empowerment provided for such delegated acts in this Regulation or by submitting a proposal to amend this Regulation. This is without prejudice to the possibility for the Commission, in appropriate cases, to initiate a procedure pursuant to Article 101 or 102 TFEU. Those procedures should be conducted in accordance with Regulation (EC) No 1019/2008.either1/2003 of the Council ([18]). In cases of urgency justified by the risk of serious and irreparable damage to competition, the Commission should consider taking precautionary measures in accordance with Article 8 of Regulation (EC) No 108/2009.either1/2003.

([18]) Regulation (EC) No.either1/2003 of the Council of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ L 1, 4.1.2003, p. 1).

(79) Where gatekeepers resort to unfair practices or practices limiting the contestability of core platform services already designated under this Regulation but not expressly provided for in the obligations set out in this Regulation, the Commission should be able to update this Regulation by means of delegated acts. Such updates by means of a delegated act should be subject to the same investigative criteria and should therefore be preceded by a market investigation. The Commission should further apply a predefined criterion to detect such types of practices. This legal criterion should ensure that the type of obligations that gatekeepers may face at any time under this Regulation is sufficiently predictable.

(80) In order to ensure the effective application and compliance with this Regulation, the Commission should have strong investigative and enforcement powers to enable it to investigate, enforce and monitor the rules laid down in this Regulation, while ensuring respect for the fundamental right to be heard and to have access to the file in the context of enforcement proceedings. The Commission should have these investigative powers also to carry out market investigations, in particular for the purpose of updating and reviewing this Regulation.

(81) The Commission should have the power to request information necessary for the purposes of this Regulation. In particular, the Commission should have access to relevant documents, data, databases, algorithms and information necessary for initiating and carrying out investigations and for monitoring compliance with the obligations set out in this Regulation, regardless of who holds that information and whatever its form or format, its storage medium and where it is stored.

(82) The Commission should be able to directly request undertakings or associations of undertakings to provide all relevant evidence, data and information. In addition, the Commission should be able to request any relevant information from the competent authorities of the Member State, or from any natural or legal person for the purposes of this Regulation. Pursuant to a Commission decision, undertakings are required to answer factual questions and to provide documents.

(83) The Commission should also be empowered to carry out inspections of any undertaking or association of undertakings, to interview any person who may have useful information and to record their statements.

(84) Interim measures can be an important tool to ensure that, while an investigation is ongoing, the infringement under investigation does not cause serious and irreparable harm to professional users or end-users of gatekeepers. This instrument is important to avoid changes that could be very difficult to undo by a decision taken by the Commission at the end of the procedure. The Commission should therefore have the power to order interim measures in the context of a procedure initiated with a view to the possible adoption of an infringement decision. This power should be exercised in cases where the Commission has found that:prima faciea breach of the gatekeepers' obligations and where there is a risk that professional users or end-users of the gatekeepers may suffer serious and irreparable harm. Interim measures should only apply for a specified period, either until the end of the procedure by the Commission or for a specified period which may be renewed as necessary and appropriate.

(85) The Commission should be able to take the necessary measures to monitor the effective application and enforcement of the obligations set out in this Regulation. These measures should include the ability of the Commission to appoint independent external experts and auditors to assist the Commission in this process, including, where appropriate, from the competent authorities of the Member States, such as data protection or consumer authorities. As regards the appointment of auditors, the Commission should ensure sufficient rotation.

(86) Compliance with the obligations imposed by this Regulation should be ensured by means of fines and periodic penalty payments. To that end, appropriate levels should also be set for fines and periodic penalty payments for failure to comply with obligations and infringements of procedural rules, subject to appropriate limitation periods, in accordance with the principles of proportionality and fairness.none other than the same.The Commission and the relevant national authorities should coordinate their enforcement efforts to ensure that those principles are respected. In particular, the Commission should take into account all fines and periodic penalty payments imposed on the same legal person for the same acts by way of a final decision in proceedings concerning an infringement of other national or Union rules, in order to ensure that the total of fines and periodic penalty payments imposed corresponds to the gravity of the infringements committed.

(87) In order to ensure the effective collection of fines imposed on business associations by infringements they have committed, it is necessary to lay down the conditions under which the Commission should be able to require payment of the fine by members of the association of undertakings when the latter is insolvent.

(88) In the framework of the procedures carried out under this Regulation, the undertaking concerned should be granted the right to be heard by the Commission and the decisions taken should be widely disseminated. While ensuring the right to good administration, the right of access to the file and the right to be heard, it is essential to protect confidential information. Furthermore, while respecting the confidentiality of information, the Commission should ensure that any information on which the decision is based is communicated in such a way that the addressee of the decision can understand the facts and considerations which led to the decision. It is also necessary to ensure that the Commission uses only information collected in accordance with this Regulation for the purposes of this Regulation, unless otherwise specifically provided for. Finally, it should be possible, under certain conditions, for certain professional documents, such as communications between lawyers and their clients, to be considered confidential if the relevant conditions are met.

(89) When preparing non-confidential summaries for publication in order to effectively enable interested third parties to comment, the Commission should take due account of the legitimate interest of undertakings in the protection of their trade secrets and other confidential information.

(90) The consistent, effective and complementary application of the available legal instruments applicable to gatekeepers requires cooperation and coordination between the Commission and national authorities, within the limits of their respective competences. The Commission and national authorities should cooperate and coordinate the actions necessary to apply the available legal instruments to gatekeepers within the meaning of this Regulation, and respect the principle of sincere cooperation set out in Article 4 of the Treaty on European Union (TEU). It should be possible for the support of national authorities to the Commission to include providing it with all necessary information in their possession or assisting it, upon request, in the exercise of its competences, in order to enable the Commission to better carry out the tasks conferred on it by this Regulation.

(91) The Commission is the sole authority empowered to enforce this Regulation. In order to support the Commission, Member States should be able to empower their national competent competition enforcement authorities to carry out investigations into possible breaches by gatekeepers of certain obligations under this Regulation. In particular, this may be relevant in cases where it cannot be determined at the outset whether a gatekeeper's behaviour may amount to an infringement of this Regulation, the competition rules that the national competent competition enforcement authority is empowered to enforce, or both. The national competent competition enforcement authority should inform the Commission of its findings on possible breaches by gatekeepers of certain obligations under this Regulation, with a view to the Commission, as the sole authority empowered to enforce the provisions laid down in this Regulation, initiating a procedure to investigate any such breach.

The Commission should have full discretion to decide on the initiation of such proceedings. In order to avoid overlapping investigations under this Regulation, the national competent authority concerned should inform the Commission before taking the first investigative measure on a possible failure by gatekeepers to comply with certain obligations under this Regulation. Furthermore, national competent authorities should closely cooperate and coordinate with the Commission when enforcing national competition rules against gatekeepers, in particular as regards the calculation of the amount of penalties. To this end, they should inform the Commission when initiating proceedings based on national competition rules against gatekeepers, as well as before imposing obligations on gatekeepers in such proceedings. In order to avoid duplication, the information regarding the draft decision pursuant to Article 11 of Regulation (EC) No 101/2009 should be included in the information.either1/2003 should be able to serve, where appropriate, as a notification under this Regulation.

(92) In order to safeguard the harmonised application and enforcement of this Regulation, it is important to ensure that national authorities, in particular national courts, have all the information necessary to ensure that their decisions do not conflict with a decision taken by the Commission pursuant to this Regulation. National courts should be allowed to ask the Commission to transmit to them information or opinions on questions relating to the application of this Regulation. At the same time, the Commission should be able to submit oral or written observations to national courts. This is without prejudice to the right of national courts to request a preliminary ruling on the basis of Article 267 TFEU.

(93) In order to ensure coherence and effective complementarity in the application of this Regulation and other sectoral rules applicable to gatekeepers, the Commission should benefit from the expertise of a dedicated high-level group. This high-level group should also be able to assist the Commission by providing advice, expertise and recommendations, where appropriate,
on general issues relating to the application or enforcement of this Regulation. The high-level group should be composed of the relevant European bodies and networks and its composition should ensure a high level of expertise and geographical balance. Members of the high-level group should regularly inform the bodies and networks they represent about the work carried out within the framework of the group and consult them in this regard.

(94) Since decisions taken by the Commission under this Regulation are subject to review by the Court of Justice in accordance with the TFEU, in accordance with Article 261 of that Treaty the Court of Justice should have full jurisdiction over fines and periodic penalty payments.

(95) The Commission should be able to draw up guidelines to provide additional guidance on different aspects of this Regulation or to support undertakings providing core platform services in complying with the obligations under this Regulation. Such guidance should be able to be based, in particular, on the experience gained by the Commission in monitoring compliance with this Regulation. The publication of guidance under this Regulation is a prerogative of the Commission and is at its sole discretion and should not be considered as a constitutive element in ensuring that the undertaking or associations of undertakings concerned comply with the obligations under this Regulation.

(96) The use of technical standards may facilitate the fulfilment of some of the obligations of gatekeepers, such as those related to data access, data portability or interoperability. In this respect, where appropriate and necessary, the Commission should be able to request European standardisation organisations to develop them.

(97) In order to ensure fairness and contestability of markets in the digital sector where gatekeepers are present throughout the Union, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of amending the methodology for determining whether the quantitative thresholds for active end-users and active business users for the designation of gatekeepers are met, as set out in an Annex to this Regulation, in respect of further specifying the additional elements of the methodology not included in that Annex for determining whether the quantitative thresholds for the designation of gatekeepers are met, and in respect of supplementing the existing obligations set out in this Regulation where, on the basis of a market investigation,
the Commission has determined the need to update the obligations to address practices that limit the contestability of core platform services or that are unfair and the update being considered falls within the scope of the powers established for such delegated acts in this Regulation.

(98) When adopting delegated acts pursuant to this Regulation, it is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making [19]. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

(99) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission to specify measures to be put in place by gatekeepers in order to effectively comply with the obligations under this Regulation; to suspend, in whole or in part, a specific obligation imposed on a gatekeeper; to exempt, in whole or in part, a gatekeeper from a specific obligation; to specify the measures to be put in place by a gatekeeper when it circumvents the obligations laid down in this Regulation; to conclude a market investigation in order to designate a gatekeeper; to impose corrective measures in the event of systematic non-compliance; to order interim measures against a gatekeeper; to make commitments binding on a gatekeeper; to declare a non-compliance; to fix the final amount of the periodic penalty payment; to determine the form, content and other details of notifications, information submissions, reasoned requests and regulatory reports submitted by gatekeepers; lay down operational and technical arrangements with a view to implementing interoperability, as well as the methodology and procedure for the audited description of techniques used for consumer profiling; lay down practical arrangements for procedures, extension of time limits, exercise of rights during procedures and conditions for disclosure, as well as for cooperation and coordination between the Commission and national authorities. Those powers should be exercised in accordance with Regulation (EU) No 1999/2002.either182/2011.

(100) The examination procedure should be used for the adoption of an implementing act on practical arrangements for cooperation and coordination between the Commission and the Member States. The advisory procedure should be used for other implementing acts provided for in this Regulation, since those implementing acts concern practical aspects of the procedures laid down in this Regulation, such as the form, content and other details of various stages of the procedure, practical arrangements for various stages of the procedure, such as, for example, the extension of procedural time limits or the right to be heard, as well as individual implementing decisions addressed to the gatekeeper.

(101) In accordance with Regulation (EU) No.either182/2011, each Member State must be represented on the advisory committee and decide on the composition of its delegation. The delegation may include, inter alia, experts from the competent authorities of the Member States who have relevant expertise on a specific issue submitted to the advisory committee.

(102) Whistleblowers may bring to the attention of competent authorities new information that will help them to detect infringements of this Regulation and enable them to impose sanctions. Appropriate mechanisms should be ensured to enable whistleblowers to alert competent authorities about actual or potential infringements of this Regulation and to protect them from retaliation. To this end, it should be provided in this Regulation that Directive (EU) 2019/1937 of the European Parliament and of the Council [20] applies to the reporting of breaches of this Regulation and to the protection of persons who report such breaches.

(103) In order to increase legal certainty, the applicability, under this Regulation, of that Directive to the reporting of infringements of this Regulation and to the protection of persons reporting such infringements should be reflected in Directive (EU) 2019/1937. It is therefore appropriate to amend the Annex to Directive (EU) 2019/1937 accordingly. It is for Member States to ensure that that amendment is reflected in their transposition measures adopted in accordance with Directive (EU) 2019/1937, although the adoption of national transposition measures is not a condition for the applicability of that Directive to the reporting of infringements of this Regulation and to the protection of persons reporting such infringements from the date of application of this Regulation.

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[19] OJ L 123 of 12.5.2016, p. 1.

[20] Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law (OJ L 305, 26.11.2019, p. 17).

(104) Consumers should be able to enforce their rights in relation to the obligations imposed on gatekeepers under this Regulation by means of representative actions in accordance with Directive (EU) 2020/1828 of the European Parliament and of the Council ([21]). To this end, it should be provided in this Regulation that Directive (EU) 2020/1828 applies to representative actions brought against acts of gatekeepers which infringe the provisions of this Regulation and harm or are likely to harm the collective interests of consumers. It is therefore appropriate to amended the Annex to that Directive accordingly. It is for Member States to ensure that that amendment is reflected in their transposition measures adopted pursuant to Directive (EU) 2020/1828, although the adoption of national transposition measures in this respect is not a condition for the applicability of that Directive to representative actions. The applicability of Directive (EU) 2020/1828 to representative actions brought against acts of gatekeepers that infringe the provisions of this Regulation and harm or are likely to harm the collective interests of consumers should begin from the date of application of the laws, regulations and administrative provisions of the Member States necessary to transpose that Directive, or from the date of application of this Regulation, whichever is the later.

(105) The Commission should regularly evaluate this Regulation and closely monitor its effects on the contestability and fairness of commercial relations in the online platform economy, in particular with a view to determining whether it needs to be amended in the light of relevant technological or commercial developments. That evaluation should include the regular review of the list of core platform services and the obligations addressed to gatekeepers, as well as their enforcement, with a view to ensuring that digital markets across the Union are contestable and fair. In that context, the Commission should also assess the scope of the obligation regarding the interoperability of number-independent interpersonal communications services. In order to obtain a comprehensive overview of developments in the digital sector, the evaluation should take into account the experiences of Member States and relevant stakeholders. In this regard, the Commission should also be able to take into consideration the opinions and reports submitted to it by the Online Platform Economy Observatory, established by Commission Decision C(2018)2393 of 26 April 2018. Following the evaluation, the Commission should take appropriate action. When carrying out evaluations and reviews of the practices and obligations set out in this Regulation, the Commission should aim to maintain a high level of protection and respect for common rights and values, in particular equality and non-discrimination.

(106) Without prejudice to the budgetary procedure and through existing financial instruments, sufficient human, financial and technical resources should be allocated to the Commission to ensure that it can effectively carry out its tasks and exercise its powers with regard to monitoring compliance with this Regulation.

(107) Since the objective of this Regulation, namely to ensure contestability and fairness in the digital sector in general and of core platform services in particular, in order to promote innovation, high-quality digital products and services, fair and competitive prices, variety and high quality for end-users in the digital sector, cannot be sufficiently achieved by the Member States but can rather, by reason of the business model and operations of gatekeepers, and the scale and effects of those, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 TEU. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.

(108) The European Data Protection Supervisor, consulted in accordance with Article 42 of Regulation (EU) 2018/1725, issued his opinion on 10 February 2021 ([22]).

(109) This Regulation respects the fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union, in particular in Articles 16, 47 and 50 thereof. Consequently, the interpretation and application of this Regulation should respect those rights and principles.

([21]) Directive (EU) 2020/1828 of the European Parliament and of the Council of 25 November 2020 on representative actions for the protection of the collective interests of consumers and repealing Directive 2009/22/EC (OJ L 409, 4.12.2020, p. 1).

([22]) OJ C 147 of 26.4.2021, p. 4.

HAVE ADOPTED THIS REGULATION:

CHAPTER I

PURPOSE, SCOPE OF APPLICATION AND DEFINITIONS

Article 1

Object and scope of application

1. The purpose of this Regulation is to contribute to the proper functioning of the internal market by laying down harmonised rules to ensure fair and contestable markets in the digital sector where gatekeepers exist for all businesses throughout the Union, for the benefit of both business and end-users.

2. This Regulation shall apply to core platform services provided or offered by gatekeepers to professional users established in the Union or to end-users established or located in the Union, irrespective of the place of establishment or residence of the gatekeepers and of the law otherwise applicable to the provision of the service.

3. This Regulation shall not apply to markets related to:

(a) electronic communications networks, as defined in Article 2, point 1, of Directive (EU) 2018/1972;

(b) electronic communications services, as defined in point 4 of Article 2 of Directive (EU) 2018/1972, other than those relating to number-independent interpersonal communications services.

4. As regards interpersonal communications services, as defined in point (5) of Article 2 of Directive (EU) 2018/1972, this Regulation is without prejudice to the powers and responsibilities conferred on national regulatory authorities and other competent authorities pursuant to Article 61 of that Directive.

5. In order to avoid fragmentation of the internal market, Member States shall not impose on gatekeepers additional obligations by means of laws, regulations or administrative provisions aimed at ensuring contestable and fair markets. Nothing in this Regulation prevents Member States from imposing on undertakings, including undertakings providing core platform services, obligations relating to matters outside the scope of this Regulation, provided that those obligations are compatible with Union law and do not arise from the consideration of the undertakings concerned as gatekeepers within the meaning of this Regulation.

6. This Regulation is without prejudice to the application of Articles 101 and 102 TFEU. It is also without prejudice to the application of:

(a) national competition rules prohibiting anti-competitive agreements, decisions by associations of undertakings, concerted practices and abuses of dominant positions;

(b) national competition rules prohibiting other forms of unilateral conduct to the extent that they apply to undertakings that are not gatekeepers or amount to imposing additional obligations on gatekeepers, and

c) Regulation (EC) No.either139/2004 of the Council ([23]) and national rules on concentration control.

([23]) Regulation (EC) No.eitherCouncil Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the 'Community Merger Regulation') (OJ L 24, 29.1.2004, p. 1).

7. National authorities shall not take decisions that are contrary to a decision taken by the Commission under this Regulation. The Commission and the Member States shall work in close cooperation and coordinate their enforcement actions on the basis of the principles set out in Articles 37 and 38.

Article 2

Definitions

For the purposes of this Regulation, the following definitions shall apply:

1) ‘gatekeeper’ means a company providing basic platform services, designated in accordance with Article 3;

2) "core platform service" means any of the following:

a) online intermediation services;

b) online search engines;

c) online social networking services;

d) video sharing platform services;

e) number-independent interpersonal communications services;

f) operating systems;

g) web browsers;

h) virtual assistants;

i) cloud computing services;

(j) online advertising services, including advertising networks, advertising exchange platforms and any other advertising intermediation services, provided by a company providing any of the basic platform services listed in points (a) to (i);

3) 'information society service' means any 'service' as defined in Article 1(1)(b) of Directive (EU) 2015/1535;

4) 'digital sector' means the sector of products supplied and services provided by or through information society services;

5) ‘online intermediation services’ means ‘online intermediation services’ as defined in point (2) of Article 2 of Regulation (EU) 2019/1150;

6) 'online search engine' means an 'online search engine' as defined in point 5 of Article 2 of Regulation (EU) 2019/1150;

7) 'online social networking service' means a platform that enables end-users to connect and communicate with each other, share content and discover content and other users across multiple devices, and in particular by means of chats, posts, videos and recommendations;

8) 'video sharing platform service' means a 'platform video sharing service' as defined in Article 1(1)(a)Bis),of Directive 2010/13/EU;

9) 'number-independent interpersonal communications service' means a 'number-independent interpersonal communications service' as defined in point 7 of Article 2 of Directive (EU) 2018/1972;

10) "operating system",softwaresystem that controls the basic functions of thehardwareor of thesoftwareand allows computer applications to run on it;

11) "web browser" means a computer application that allows end users to access and interact with web content hosted on servers that are connected to networks such as the Internet, including stand-alone web browsers and web browsers integrated into the Internet.softwareor similar;

12) "virtual assistant" means asoftwarewhich can process requests, tasks or questions, including those formulated by means of sounds, images, text, gestures or movements and which, based on these requests, tasks or questions, provides access to other services or controls connected physical devices;

13) 'cloud computing service' means a 'cloud computing service' as defined in point 19 of Article 4 of Directive (EU) 2016/1148 of the European Parliament and of the Council ([24]);

14) 'application stores' means a type of online intermediation service focusing on computer applications as an intermediary product or service;

15) 'computer application' means any digital product or service that runs on an operating system;

16) 'payment service' means a 'payment service' as defined in point (3) of Article 4 of Directive (EU) 2015/2366;

17) 'technical support service for a payment service' means a service within the meaning of Article 3(j) of Directive (EU) 2015/2366;

18) 'in-app purchase payment system' means a computer application, service or user interface that facilitates the purchase of digital content or digital services within a computer application, such as content, subscriptions, features or functionality, and payment for such purchases;

19) 'identification service' means a type of service provided in conjunction with or in support of core platform services that enables any type of verification of the identity of end users or business users, regardless of the technology used;

20) "end user" means any natural or legal person who uses basic platform services and who does not do so as a professional user;

21) 'professional user' means any natural or legal person who, on a commercial or professional basis, uses core platform services to supply products or provide services to end users or uses such services in the context of supplying products or providing services to end users;

(22) 'ranking' means the relative prominence attributed to products or services offered through online intermediation services, online social networking services, video-sharing platform services or virtual assistants, or the relevance attributed to search results by online search engines, as presented, organised or communicated by undertakings providing online intermediation services, online social networking services, video-sharing platform services, virtual assistants or online search engines, regardless of the technological means employed for such presentation, organisation or communication and regardless of whether only one result is presented or communicated;

23) "search results" means any information in any format, including textual, graphical, voice or other results, offered in response to and in relation to a search query, regardless of whether the information offered is a paid or unpaid result, a direct response or any product, service or information offered in connection with, displayed in conjunction with, or integrated in part or entirely into, organic results;

24) 'data' means any digital representation of acts, facts or information and any compilation of such acts, facts or information, including in the form of a sound, visual or audiovisual recording;

25) 'personal data' means 'personal data' as defined in point 1 of Article 4 of Regulation (EU) 2016/679;

26) 'non-personal data' means data that is not personal data;

27) 'undertaking' means an entity carrying on an economic activity, regardless of its legal status and the way it is financed, including all related or linked undertakings that form a group through direct or indirect control of one undertaking by another;

([24]) Directive (EU) 2016/1148 of the European Parliament and of the Council of 6 July 2016 on measures for a high common level of security of network and information systems across the Union (OJ L 194, 19.7.2016, p. 1).

28) 'control' means the ability to exercise decisive influence over an undertaking within the meaning of Article 3(2) of Regulation (EC) No 1089/2008.either139/2004;

29) 'interoperability' means the ability to exchange information and to mutually use the information that has been exchanged through interfaces or other solutions, so that all elements ofhardwareeithersoftware work withhardwareandsoftwaredifferent and with users in all the ways they should work;

30) 'turnover' means the amounts obtained by an undertaking within the meaning of Article 5(1) of Regulation (EC) No 107/2008.either139/2004;

31) 'profiling' means 'profiling' as defined in point (4) of Article 4 of Regulation (EU) 2016/679;

32) ‘consent’ means ‘consent’ as defined in point 11 of Article 4 of Regulation (EU) 2016/679;

33) 'national court' means a court of a Member State within the meaning of Article 267 TFEU.

CHAPTER II

ACCESS GUARDIANS

Article 3

Appointment of access guards

1. A company will be designated as a gatekeeper if:

a) has a major influence on the domestic market;

b) provides a basic platform service that is an important gateway for professional users to reach end users, and

c) has a strong and lasting position with regard to its operations, or is likely to achieve such a position in the near future.

2. A company shall be presumed to meet the respective requirements set out in paragraph 1:

(a) in relation to point (a) of paragraph 1, where the undertaking achieves an annual turnover in the Union of EUR 7 500 000 000 or more in each of the last three financial years, or where its average market capitalisation or equivalent fair market value is at least EUR 75 000 000 000 in the last financial year, and provides the same core platform service in at least three Member States;

(b) in relation to point (b) of paragraph 1, where it provides a core platform service which, in the last financial year, has had at least 45 million monthly active end-users established or located in the Union and at least 10 000 annual active business users established or located in the Union, identified and calculated in accordance with the methodology and indicators set out in the Annex;

(c) in relation to paragraph 1(c), when the thresholds established in paragraph b) of this paragraph have been reached in each of the last three financial years.

3. Where an undertaking providing core platform services reaches all of the thresholds set out in paragraph 2, it shall notify the Commission without delay and in any event within two months of the date on which those thresholds have been reached and shall provide the Commission with the relevant information referred to in paragraph 2. That notification shall include the relevant information referred to in paragraph 2 for each of the undertaking's core platform services that reaches the thresholds set out in point (b) of paragraph 2. Each time a new core platform service provided by an undertaking that has previously been designated as a gatekeeper reaches the thresholds set out in points (b) and (c) of paragraph 2, the undertaking shall notify the Commission within two months of the date on which those thresholds have been reached.

Where the undertaking providing the core platform service fails to comply with the notification requirement to the Commission laid down in the first subparagraph of this paragraph and does not provide, within the period set by the Commission in the request for information pursuant to Article 21, all relevant information necessary for the Commission to designate the undertaking concerned as a gatekeeper in accordance with paragraph 4 of this Article, the Commission shall retain the power to designate that undertaking as a gatekeeper, based on the information at its disposal.

Where the undertaking providing basic platform services complies with the request for information pursuant to the second subparagraph of this paragraph or where the information is provided after the expiry of the period referred to in that subparagraph, the Commission shall apply the procedure set out in paragraph 4.

4. The Commission shall designate as gatekeeper, without undue delay and no later than 45 working days after receiving the complete information referred to in paragraph 3, an undertaking providing core platform services that meets all the thresholds set out in paragraph 2.

5. The undertaking providing core platform services may submit, together with its notification, sufficiently substantiated arguments to demonstrate that, exceptionally, despite having met all the thresholds set out in paragraph 2, given the circumstances in which the core platform service in question operates, it does not comply with the requirements listed in paragraph 1.

Where the Commission considers that the arguments submitted pursuant to the first subparagraph by the undertaking providing basic platform services are not sufficiently substantiated because they do not manifestly call into question the presumptions set out in paragraph 2 of this Article, it may reject those arguments within the period referred to in paragraph 4, without applying the procedure laid down in Article 17(3).

Where the undertaking providing basic platform services submits sufficiently substantiated arguments which manifestly call into question the presumptions set out in paragraph 2 of this Article, the Commission may, by way of derogation from the first subparagraph of this paragraph, within the period referred to in paragraph 4 of this Article, initiate the procedure provided for in Article 17(3).

If the Commission finds that the undertaking providing core platform services has failed to demonstrate that the relevant core platform services it provides do not comply with the requirements set out in paragraph 1 of this Article, it shall designate that undertaking as a gatekeeper in accordance with the procedure set out in Article 17(3).

6. The Commission shall be empowered to adopt delegated acts in accordance with Article 49 in order to supplement this Regulation by specifying the methodology for determining whether the quantitative thresholds set out in paragraph 2 of this Article are met and to periodically adjust that methodology to market and technological developments, where necessary.

7. The Commission shall be empowered to adopt delegated acts in accordance with Article 49 to amend this Regulation by updating the methodology and the list of indicators set out in the Annex.

8. The Commission shall designate as a gatekeeper, in accordance with the procedure set out in Article 17, any undertaking providing core platform services that meets all the requirements of paragraph 1 of this Article but does not meet all the thresholds set out in paragraph 2 of this Article.

To this end, the Commission shall take into account some or all of the following elements, insofar as they are relevant to the undertaking providing core platform services concerned:

(a) the size, including turnover and market capitalisation, operations and position of such company;

b) the number of professional users using the basic platform service to reach end users and the number of end users;

(c) network effects and data benefits, in particular in relation to the company's access to personal and non-personal data, the company's collection of such data or its analysis capabilities;

(d) any effects related to the scale or scope from which the undertaking benefits, in particular with regard to data and, where applicable, its activities outside the Union;

(e) lock-in of business or end-users, including the costs of switching providers and behavioural biases that reduce the ability of business and end-users to switch providers or use several providers for the same service;

f) a conglomerate structure or vertical integration of the company, for example allowing it to offset gains and losses between activities, combine data from different sources or take advantage of its position, or

g) other structural characteristics of companies or services.

When carrying out its assessment pursuant to this paragraph, the Commission shall take into account foreseeable developments with regard to the elements listed in the second subparagraph, in particular any envisaged concentration affecting another undertaking providing essential platform services or any other service in the digital sector or enabling the collection of data.

Where an undertaking providing a core platform service which does not meet the quantitative thresholds set out in paragraph 2 fails to comply with the investigative measures imposed by the Commission in a significant manner, and continues to fail to comply after having been invited to comply within a reasonable period and to submit observations, the Commission may, on the basis of the data at its disposal, designate that undertaking as a gatekeeper.

9. For each undertaking designated as a gatekeeper pursuant to paragraph 4 or paragraph 8, the Commission shall list in the designation decision the relevant core platform services provided by that undertaking which are individually an important gateway for business users to reach end-users as referred to in paragraph 1(b).

10. The gatekeeper shall comply with the obligations set out in Articles 5, 6 and 7 within six months of a core platform service being listed in the designation decision pursuant to paragraph 9 of this Article.

Article 4

Review of gatekeeper status

1. The Commission may, upon request or on its own initiative, reconsider, modify or repeal at any time a designation decision taken in accordance with Article 3 for one of the following reasons:

a) any of the facts on which the designation decision was based have substantially changed;

b) the designation decision was based on incomplete, incorrect or misleading information.

2. The Commission shall periodically, and at least every three years, review whether gatekeepers continue to comply with the requirements set out in Article 3(1). That review shall also consider whether it is appropriate to amend the gatekeeper's list of core platform services that are individually an important gateway for business users to reach end-users, as referred to in point (b) of Article 3(1). Such a review shall not have any suspensive effect as regards the gatekeeper's obligations.

The Commission will also examine, at least annually, whether new undertakings providing basic platform services comply with these requirements.

The Commission shall adopt a decision confirming, amending or repealing the designation decision where it considers, on the basis of the reviews pursuant to the first subparagraph, that the facts on which the designation of undertakings providing core platform services as gatekeepers was based have changed.

3. The Commission shall publish and update a list of gatekeepers and the list of core platform services in respect of which gatekeepers must comply with the obligations set out in Chapter III on an ongoing basis.

CHAPTER III

GATEKEEPER PRACTICES THAT LIMIT DISPUTABILITY OR ARE UNFAIR

Article 5

Obligations of gatekeepers

1. The gatekeeper shall comply with all obligations set out in this Article for each of its core platform services listed in the designation decision pursuant to Article 3(9).

2. The gatekeeper shall refrain from doing the following:

a) process, for the purpose of providing online advertising services, the personal data of end users who use third-party services that make use of the Gatekeeper's core platform services;

b) combine personal data from the relevant core platform services with personal data from any additional core platform services or any other services provided by the gatekeeper or with personal data from third party services;

c) cross-reference personal data from the relevant core platform service with other services provided separately by the gatekeeper, including other core platform services, and vice versa; and

d) log end users into other gatekeeper services to combine personal data;

unless the end user has been presented with that specific option and has given his or her consent within the meaning of Article 4, point 11, and Article 7 of Regulation (EU) 2016/679.

Where the end user has refused or withdrawn consent given for the purposes of the first paragraph, the gatekeeper shall not request consent for the same purpose more than once within a period of one year.

This section is without prejudice to the possibility for the gatekeeper to rely on Article 6(1)(c), (d) and (e) of Regulation (EU) 2016/679, where applicable.

3. The gatekeeper shall refrain from applying obligations that prevent professional users from offering the same products or services to end users through third-party online intermediation services or its own direct online sales channel at prices or conditions that are different from those offered through the gatekeeper's online intermediation services.

4. The gatekeeper shall enable professional users, free of charge, to communicate and promote offers, in particular with different conditions, among end users acquired through its basic platform service or other channels and to conclude contracts with those end users, regardless of whether, for this purpose, they use the gatekeeper's basic platform services.

5. The gatekeeper shall enable end users, through its core platform services, to access and use content, subscriptions, features or other items via computer applications of a business user, including where such end users have acquired these items through the relevant business user without using the gatekeeper's core platform services.

6. The gatekeeper shall not, directly or indirectly, prevent or limit business users or end-users from bringing before any relevant public authority, including national courts, claims alleging non-compliance by the gatekeeper with Union or relevant national law in relation to any practice of the gatekeeper. This is without prejudice to the right of business users and gatekeepers to set out in their contracts the terms of use of legal mechanisms for handling complaints.

7. The gatekeeper shall not require end users to use an authentication service, web browser engine or payment service or technical services of that gatekeeper that enable the provision of payment services, such as payment systems for in-app purchases of that gatekeeper, as part of the services provided by business users using that gatekeeper's core platform services; and, in the case of business users, the gatekeeper shall not require them to use and offer or interoperate with such services.

8. The gatekeeper shall not require business users or end users to subscribe to or register for any additional core platform services listed in the designation decision pursuant to Article 3(9) or to meet the thresholds set out in point (b) of Article 3(2) as a condition for being able to use, access, register for or subscribe to any of that gatekeeper's core platform services listed pursuant to that Article.

9. The Gatekeeper shall provide each advertiser to whom it provides online advertising services, or third parties authorized by the advertisers, upon request of the advertiser, with daily and free information on each advertisement of the advertiser, in relation to:

(a) the price and commissions paid by that advertiser, including all deductions and surcharges, for each of the relevant online advertising services provided by the gatekeeper;

b) the remuneration received by the publisher with its consent, including all deductions and surcharges, and

c) the measures from which each of the prices, commissions and remunerations are calculated.

Where a publisher does not consent to the sharing of information relating to the remuneration received, as referred to in point (b) of the first subparagraph, the gatekeeper shall provide each advertiser free of charge with information relating to the average daily remuneration received by that publisher, including all deductions and surcharges, for the relevant advertisements.

10. The Gatekeeper shall provide to each publisher for which it provides online advertising services, or to third parties authorized by publishers, upon request by the publisher, daily and free information on each advertisement appearing in the publisher's inventory, relating to:

(a) the remuneration received and commissions paid by that publisher, including all deductions and surcharges, for each of the relevant online advertising services provided by the gatekeeper;

b) the price paid by the advertiser with its consent, including all deductions and surcharges, and

c) the metric from which each of the prices and remunerations are calculated.

In the event that an advertiser does not consent to the sharing of information, the gatekeeper will provide each publisher free of charge with information regarding the average daily price paid by that advertiser, including all deductions and surcharges, for the relevant advertisements.

Article 6

Obligations of gatekeepers that may be further specified under Article 8

1. The gatekeeper shall comply with all obligations set out in this Article for each of its core platform services listed in the designation decision pursuant to Article 3(9).

2. The Gatekeeper shall not use, in competition with Business Users, any non-publicly accessible data generated or provided by such Business Users in the context of their use of the relevant Core Platform Services or services provided in conjunction with the relevant Core Platform Services, or in support of such services, including data generated or provided by customers of such Business Users.

For the purposes of the first paragraph, non-publicly accessible data shall include all aggregated and disaggregated data generated by business users that can be inferred or collected through the business activities of business users or their end users, including click, search, view and voice data, on the relevant core platform services or on services provided in conjunction with, or in support of, the relevant gatekeeper's core platform services.

3. The gatekeeper shall allow and technically enable end users to easily uninstall any software application from the gatekeeper's operating system, without prejudice to the possibility for the gatekeeper to restrict the uninstallation of pre-installed software applications that are essential for the operation of the operating system or the device and which, from a technical point of view, cannot be offered autonomously by third parties.

The gatekeeper shall technically permit and enable end users to easily change the default settings of the gatekeeper's operating system, virtual assistant and web browser when directing or guiding end users to products or services offered by the gatekeeper. This includes requiring end users, at the time of their first use of an online search engine, virtual assistant or web browser of the gatekeeper listed in the designation decision pursuant to Article 3(9), to choose from a list of the main available service providers the online search engine, virtual assistant or browser to which the gatekeeper's operating system directs or guides users by default, and the online search engine to which the gatekeeper's virtual assistant and browser direct or guide users by default.

4. The gatekeeper shall allow and technically enable the installation and effective use of third party computer applications or application stores that use or interoperate with its operating system and shall allow access to such computer applications or application stores by means other than the relevant core platform services of such gatekeeper. The gatekeeper shall not, where applicable, prevent downloaded third party computer applications or application stores from prompting end users to decide whether they wish to set such downloaded computer application or application store as the default. The gatekeeper shall technically enable end users who choose to set such downloaded computer application or application store as the default to easily make such change.

To the extent that these are strictly necessary and proportionate, the gatekeeper shall not be prevented from taking measures to ensure that third-party computer applications or computer application stores do not jeopardize the integrity of thehardwareor the operating system provided by the gatekeeper, provided that such measures do not exceed what is strictly necessary and proportionate and are duly justified by the gatekeeper.

Furthermore, to the extent that these are strictly necessary and proportionate, the gatekeeper shall not be prevented from applying measures and settings other than the default settings that allow end users to effectively protect security in relation to third-party computer applications or computer application stores, provided that such measures and such settings other than the default settings are duly justified by the gatekeeper.

5. The gatekeeper shall not treat the services and products offered by the gatekeeper itself more favourably, either in ranking or in related indexing and crawling functions, than it treats similar services or products of third parties. The gatekeeper shall apply transparent, fair and non-discriminatory conditions to such ranking.

6. The gatekeeper shall not restrict, technically or otherwise, the ability of end users to switch between and subscribe to different computer applications and services accessible through the gatekeeper's core platform services, including with regard to the choice of internet access services for end users.

7. The access gatekeeper will allow service providers and suppliers ofhardwareinteroperate freely and effectively with the same functions of thehardwareand thesoftwareaccessible or controllable through the operating system or virtual assistant listed in the designation decision pursuant to Article 3(9) that are made available for the services or thehardwareprovided or supplied by the gatekeeper; and shall also allow access to those functions for interoperability purposes. The gatekeeper shall also allow professional users and alternative providers of services provided in conjunction with, or in support of, the core platform services to effectively and freely interoperable with the same operating system functions, thehardwareor the software, and access to such features for interoperability purposes, regardless of whether such features are part of the operating system, are available to that gatekeeper, or are used by that gatekeeper in providing such services.

The gatekeeper shall not be prevented from taking strictly necessary and proportionate measures to ensure that interoperability does not compromise the integrity of the functions of the operating system, the virtual assistant, the hardwareor the softwareprovided by the gatekeeper, provided that he duly justifies these measures.

8. The Gatekeeper shall provide advertisers and publishers, as well as third parties authorised by advertisers and publishers, upon request and free of charge, with access to the Gatekeeper's performance measurement tools and the data necessary for advertisers and publishers to conduct their own independent verification of advertising inventory, including aggregated and disaggregated data. Such data shall be provided in a manner that enables advertisers and publishers to use their own verification and measurement tools to assess the performance of the core platform services provided by the Gatekeeper.

9. The gatekeeper shall provide end users and third parties authorized by an end user, upon request and free of charge, with effective portability of data provided by the end user or generated by the end user's activity in the context of the use of the relevant core platform service, for example by providing free tools to facilitate the effective exercise of such data portability, as well as continuous and real-time access to such data.

10. The gatekeeper shall provide professional users and third parties authorized by a professional user, upon request and free of charge, effective, quality, continuous and real-time access to, and use of, aggregated or disaggregated data, including personal data, provided or generated in the context of the use of the core platform services or services provided in conjunction with or in support of the relevant core platform services by such professional users and end users making use of products or services provided by such professional users. In relation to personal data, the gatekeeper shall provide such access to or use of personal data only where such data is directly related to the end users' use of products or services offered by the relevant professional user through the relevant core platform service and where the end user opts into such sharing by giving his or her consent.

11. The gatekeeper shall provide third party online search engine providers, upon request, with access on fair, reasonable and non-discriminatory terms to data on rankings, queries, clicks and views in relation to free and paid search generated by end users on its online search engines. Any such query, click and view data that is personal data shall be anonymised.

12. The gatekeeper shall apply to business users fair, reasonable and non-discriminatory general conditions of access to its computer application stores, online search engines and online social networking services listed in the designation decision pursuant to Article 3(9).

To this end, the gatekeeper will publish general conditions of access, including an alternative dispute resolution mechanism.

The Commission shall assess whether the published general conditions of access comply with the provisions of this section.

13. The gatekeeper shall not set general conditions for terminating the provision of a core platform service that are disproportionate. The gatekeeper shall ensure that the conditions for termination can be exercised without undue hardship.

Article 7

Obligation of gatekeepers regarding interoperability of communications services interpersonal independent of numbering

1. Where a gatekeeper provides number-independent interpersonal communications services as listed in the designation decision pursuant to Article 3(9), it shall make the core functionalities of its number-independent interpersonal communications services interoperable with the number-independent interpersonal communications services of another provider that offers or intends to offer such services in the Union by providing the necessary technical interfaces or similar solutions facilitating interoperability, upon request and free of charge.

2. The gatekeeper shall ensure at least interoperability of the following basic functionalities referred to in paragraph 1 where it itself provides such functionalities to its own end users:

(a) following the listing of the designation decision pursuant to Article 3(9):

i) end-to-end text messages between two individual end users,

(ii) the exchange of images, voice messages, videos and other files attached to end-to-end communication between two individual end users;

b) within two years of the appointment:

i) end-to-end text messages between groups of individual end users,

ii) the exchange of images, voice messages, videos and other files attached to the end-to-end communication between a group chat and an individual end user;

c) within four years of the appointment:

i) end-to-end voice calls between two individual end users,

ii) end-to-end video calls between two individual end users,

iii) end-to-end voice calls between a group chat and an individual end user,

iv) end-to-end video calls between a group chat and an individual end user.

3. The level of security, including end-to-end encryption, if applicable, provided by the gatekeeper to its own end users shall be maintained across all interoperable services.

4. The gatekeeper shall publish a reference offer setting out the technical details and general principles and conditions for interoperability with its number-independent interpersonal communications services, including necessary details regarding the level of security and end-to-end encryption. The gatekeeper shall publish that reference offer within the period specified in Article 3(10) and update it where necessary.

5. Following publication of the reference offer pursuant to paragraph 4, any provider of number-independent interpersonal communications services offering or intending to offer such services in the Union may request interoperability with the number-independent interpersonal communications services provided by the gatekeeper. Such a request may include some or all of the basic functionalities listed in paragraph 2. The gatekeeper shall comply with any reasonable interoperability request within three months of receipt of the request by making the requested basic functionalities operational.

6. Exceptionally, the Commission may, upon reasoned request from the gatekeeper, extend the compliance periods set out in paragraphs 2 or 5 where the gatekeeper demonstrates that such an extension is necessary to ensure effective interoperability and to maintain the required level of security, including end-to-end encryption, where applicable.

7. End-users of the gatekeeper's number-independent interpersonal communications services and the requesting number-independent interpersonal communications service provider shall remain free to decide whether to make use of the interoperable basic functionalities that may be provided by the gatekeeper pursuant to paragraph 1.

8. The gatekeeper shall only collect and exchange with the provider of number-independent interpersonal communications services submitting an interoperability request those personal data of end users that are strictly necessary to provide effective interoperability. Such collection and exchange of personal data of end users shall be in full compliance with Regulation (EU) 2016/679 and Directive 2002/58/EC.

9. The gatekeeper shall not be prevented from taking measures to ensure that third-party providers of number-independent interpersonal communications services requesting interoperability do not jeopardize the integration, security and confidentiality of its services, provided that such measures are strictly necessary and proportionate and are duly justified by the gatekeeper.

Article 8

Compliance with the obligations of gatekeepers

1. The gatekeeper shall ensure and demonstrate compliance with the obligations set out in Articles 5, 6 and 7 of this Regulation. The measures applied by the gatekeeper to ensure compliance with those articles shall be effective in achieving the objectives of this Regulation and of the corresponding obligation. The gatekeeper shall ensure that the application of those measures is in compliance with applicable law, in particular Regulation (EU) 2016/679, Directive 2002/58/EC, legislation on cybersecurity, consumer protection and product safety, and accessibility requirements.

2. The Commission may, on its own initiative or at the request of a gatekeeper pursuant to paragraph 3 of this Article, initiate a procedure pursuant to Article 20.

The Commission may adopt an implementing act specifying the measures to be implemented by the gatekeeper concerned in order to effectively comply with the obligations laid down in Articles 6 and 7. That implementing act shall be adopted within six months of the initiation of the procedure provided for in Article 20 in accordance with the advisory procedure referred to in Article 50(2).

When initiating a procedure on grounds of circumvention pursuant to Article 13, such measures may refer to the obligations set out in Articles 5, 6 and 7.

3. A gatekeeper may ask the Commission to participate in a procedure to determine whether the measures that the gatekeeper intends to implement or has implemented to ensure compliance with Articles 6 and 7 are effective in achieving the objective of the relevant obligation in the gatekeeper's specific circumstances. The Commission shall have a discretion to decide whether to participate in such a procedure, respecting the principles of equal treatment, proportionality and good administration.

In its request, the gatekeeper shall submit a reasoned statement explaining the measures it intends to take or has taken. In addition, the gatekeeper shall provide a non-confidential version of its reasoned statement which may be shared with third parties in accordance with paragraph 6.

4. Paragraphs 2 and 3 of this Article shall be without prejudice to the powers conferred on the Commission under Articles 29, 30 and 31.

5. With a view to adopting the decision provided for in paragraph 2, the Commission shall communicate its preliminary findings to the gatekeeper within three months of the initiation of the procedure provided for in Article 20. In the preliminary findings, the Commission shall explain the measures which it considers it should take or which it considers the gatekeeper concerned should take in order to effectively address the preliminary findings.

6. In order to enable interested third parties to make comments effectively, the Commission shall, when communicating its preliminary findings to the gatekeeper pursuant to paragraph 5, or as soon as possible after communicating those findings, publish a non-confidential summary of the case and the measures it is considering taking or considers should be taken by the gatekeeper concerned. The Commission shall set a reasonable period for the submission of such comments.

7. When specifying the measures provided for in paragraph 2, the Commission shall ensure that the measures are effective in achieving the objectives of this Regulation and the corresponding obligation, and proportionate to the specific circumstances of the gatekeeper and the service concerned.

8. For the purposes of specifying the obligations provided for in Article 6(11) and (12), the Commission shall also assess whether the measures planned or implemented ensure that no imbalance remains between the rights and obligations of business users and that the measures do not in themselves confer an advantage on the gatekeeper that is disproportionate to the service provided by the gatekeeper to business users.

9. With regard to the procedure provided for in paragraph 2, the Commission may, upon request or on its own initiative, decide to reopen the procedure where:

a) there has been a significant change in any of the facts on which the decision was based, or

b) the decision was based on incomplete, incorrect or misleading information, or

c) the measures specified in the decision are not effective.

Article 9

Suspension

1. Where the gatekeeper demonstrates in a reasoned request that compliance with a specific obligation set out in Articles 5, 6 or 7 for a core platform service listed in the designation decision pursuant to Article 3(9) would, due to exceptional circumstances beyond its control, jeopardise the economic viability of its operations in the Union, the Commission may adopt an implementing act setting out its decision to suspend, on an exceptional basis, in whole or in part, the specific obligation referred to in that reasoned request ('suspension decision'). In that implementing act, the Commission shall justify its suspension decision by indicating the exceptional circumstances justifying the suspension. That implementing act shall be limited to the extent and duration necessary to address that threat to the viability of the gatekeeper. The Commission shall endeavour to adopt that implementing act without delay and at the latest three months after receipt of a complete reasoned request. That implementing act shall be adopted in accordance with the advisory procedure referred to in Article 50(2).

2. Where suspension is granted pursuant to paragraph 1, the Commission shall review its suspension decision annually, unless a shorter period is specified in the decision. Following such review, the Commission shall either fully or partially lift the suspension or decide that the conditions set out in paragraph 1 must continue to be fulfilled.

3. In cases of urgency and upon a reasoned request from a gatekeeper, the Commission may provisionally suspend the application of a specific obligation referred to in paragraph 1 for one or more individual core platform services already before adopting the decision provided for in that paragraph. Such a request may be submitted and granted at any time pending the Commission's assessment pursuant to paragraph 1.

4. When examining the request referred to in paragraphs 1 and 3, the Commission shall take into account, in particular, the impact of compliance with the specific obligation on the economic viability of the gatekeeper's operations in the Union and on third parties, in particular SMEs and consumers. Suspension may be subject to conditions and obligations defined by the Commission in order to ensure a fair balance between those interests and the objectives of this Regulation.

Article 10

Exemption for reasons of public health and public safety

1. Upon a reasoned request from a gatekeeper or on its own initiative, the Commission may adopt an implementing act setting out its decision to exempt that gatekeeper, in whole or in part, from a specific obligation laid down in Articles 5, 6 or 7 in relation to a core platform service listed in the designation decision pursuant to Article 3(9), where such exemption is justified on the grounds set out in paragraph 3 of this Article ('the exemption decision'). The Commission shall adopt the exemption decision within three months of receipt of a complete reasoned request and shall provide a reasoned statement explaining the grounds for exemption. That implementing act shall be adopted in accordance with the advisory procedure referred to in Article 50(2).

2. Where an exemption is granted pursuant to paragraph 1, the Commission shall review its exemption decision when the reason for the exemption ceases to exist or at least annually. Following such review, the Commission shall either fully or partially lift the exemption or decide that the conditions set out in paragraph 1 should continue to be met.

3. The exemption pursuant to paragraph 1 may only be granted on grounds of public health or public safety.

4. In an urgent case and upon a reasoned request from a gatekeeper or on its own initiative, the Commission may provisionally suspend the application of a specific obligation referred to in paragraph 1 for one or more individual core platform services before taking the decision provided for in that paragraph. Such a request may be submitted and granted at any time pending the Commission's assessment pursuant to paragraph 1.

5. When examining the request referred to in paragraphs 1 and 4, the Commission shall take into account, in particular, the impact of compliance with the specific obligation on the grounds set out in paragraph 3, as well as the consequences for the gatekeeper concerned and for third parties. The Commission may make the suspension subject to conditions and obligations in order to ensure a fair balance between the objectives pursued by the grounds set out in paragraph 3 and the objectives of this Regulation.

Article 11

Information

1. Within six months of its designation pursuant to Article 3, and in accordance with Article 3(10), the gatekeeper shall provide the Commission with a report describing in a detailed and transparent manner the measures it has implemented to ensure compliance with the obligations set out in Articles 5, 6 and 7.

2. Within the period referred to in paragraph 1, the gatekeeper shall publish a non-confidential summary of that report and provide it to the Commission.

The gatekeeper will update the report and the non-confidential summary at least annually.

The Commission shall provide a link to this non-confidential summary on its website.

Article 12

Updating the obligations of gatekeepers

1. The Commission shall be empowered to adopt delegated acts in accordance with Article 49 to supplement this Regulation with regard to the obligations laid down in Articles 5 and 6. Those delegated acts shall be based on a market investigation pursuant to Article 19 which has identified the need to update those obligations in order to address practices which limit the contestability of core platform services or which are unfair in the same way as practices covered by the obligations laid down in Articles 5 and 6.

2. The scope of a delegated act adopted pursuant to paragraph 1 shall be limited to:

(a) extend an obligation that only applies in relation to certain core platform services to other core platform services listed in Article 2, point 2;

b) extend an obligation that benefits certain professional users or end-users so that it benefits other professional users or end-users;

(c) specify the manner in which gatekeepers must comply with the obligations set out in Articles 5 and 6, in order to ensure effective compliance with these obligations;

(d) extend an obligation that only applies in relation to certain services provided in conjunction with or in support of core platform services to other services provided in conjunction with or in support of core platform services;

(e) extend an obligation that only applies in relation to certain types of data to other types of data;

f) introduce new conditions where an obligation imposes certain conditions with respect to the gatekeeper's behaviour, or

g) apply an obligation governing the relationship between several gatekeeper core platform services to the relationship between a gatekeeper core platform service and other gatekeeper services.

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 49 to amend this Regulation as regards the list of basic functionalities referred to in Article 7(2) by adding or removing functionalities of number-independent interpersonal communications services.

Those delegated acts shall be based on a market investigation pursuant to Article 19 which has identified the need to update those obligations to address practices which limit the contestability of core platform services or which are unfair in the same way as practices covered by the obligations set out in Article 7.

4. The Commission shall be empowered to adopt delegated acts in accordance with Article 49 to supplement this Regulation as regards the obligations set out in Article 7 by specifying the manner in which those obligations are to be met in order to ensure their effective enforcement. Those delegated acts shall be based on a market investigation pursuant to Article 19 identifying the need to update those obligations in order to address practices that limit the contestability of core platform services or that are unfair in the same way as practices covered by the obligations set out in Article 7.

5. A practice referred to in paragraphs 1, 3 and 4 shall be deemed to limit the contestability of basic platform services or to be unfair when:

a) such practice is carried out by gatekeepers and may hinder innovation and limit the choice of professional users and end users because:

(i) affects or threatens to affect the contestability of a core platform service or other digital sector services on a lasting basis due to the creation or consolidation of barriers to the entry of other companies or their development as providers of a core platform service or other digital sector services, or

ii) prevents other operators from having the same access to a key input as the gatekeeper, or

b) there is an imbalance between the rights and obligations of professional users and the gatekeeper obtains from professional users an advantage that is disproportionate to the service it provides to such professional users.

Article 13

Anti-circumvention

1. An undertaking providing core platform services shall not segment, divide, subdivide, fragment or separate services through contractual, commercial, technical or other means in order to circumvent the quantitative thresholds set out in Article 3(2). Any such practice by an undertaking shall not prevent the Commission from designating it as a gatekeeper pursuant to Article 3(4).

2. Where the Commission suspects that a company providing basic platform services is engaging in any of the practices set out in paragraph 1, it may require that company to provide any information it considers necessary to determine whether the company in question has engaged in such practice.

3. Gatekeepers shall ensure that the obligations set out in Articles 5, 6 and 7 are fully and effectively fulfilled.

4. Gatekeepers shall not engage in any conduct that undermines the effective performance of the obligations set out in Articles 5, 6 and 7, regardless of whether such conduct is contractual, commercial, technical or of any other nature, or consists of the use of behaviour-based techniques or interface design.

5. Where consent is required for the collection, processing, matching and sharing of personal data to ensure compliance with this Regulation, gatekeepers shall take appropriate measures to enable business users to obtain directly the necessary consent for their processing, where such consent is required under Regulation (EU) 2016/679 or Directive 2002/58/EC, or to comply with Union data protection and privacy rules and principles in other ways, including by providing business users with appropriately anonymised data where appropriate. Gatekeepers shall not make obtaining such consent from the business user more burdensome than for their own services.

6. Gatekeepers shall not degrade the conditions or quality of any core platform services provided to business users or end-users availing themselves of the rights or choices set out in Articles 5, 6 and 7, or make it unduly difficult for them to exercise those rights or choices, including by offering end-users choices in a non-neutral manner, or by subverting end-users' or business users' autonomy and decision-making or choice through the structure, design, function or mode of operation of the user interface or its components.

7. Where gatekeepers circumvent or attempt to circumvent any of the obligations laid down in Articles 5, 6 or 7 in the manner described in paragraphs 4, 5 and 6 of this Article, the Commission may initiate a procedure in accordance with Article 20 and adopt an implementing act in accordance with Article 8(2) specifying the measures to be taken by gatekeepers.

8. Paragraph 6 of this Article shall be without prejudice to the powers conferred on the Commission under Articles 29, 30 and 31.

Article 14

Obligation to report concentrations

1. Gatekeepers shall inform the Commission of any proposed concentration within the meaning of Article 3 of Regulation (EC) No 1099/2008.either139/2004, where the merged entities or the company resulting from the concentration provide basic platform services or any other services in the digital sector or allow the collection of data, regardless of whether it is notifiable to the Commission under that Regulation or to a national competent competition authority under national rules on concentrations.

The gatekeepers shall inform the Commission of such a concentration before its implementation and after the conclusion of the agreement, the announcement of the public tender or the acquisition of a majority stake.

2. The information provided by gatekeepers pursuant to paragraph 1 shall at least describe the undertakings affected by the concentration, their annual turnover in the Union and worldwide, their areas of activity, including activities directly related to the concentration and the transaction value of the contract or an estimate thereof, together with a summary of the concentration, including its nature and justification, and a list of the Member States affected by the concentration.

The information provided by gatekeepers shall also describe, in respect of any relevant core platform service, their annual turnover in the Union, the number of annual active business users and the number of monthly active end-users, respectively.

3. If, following any concentration referred to in paragraph 1 of this Article, the additional core platform services individually reach the thresholds set out in Article 3(2)(b), the gatekeeper concerned shall inform the Commission thereof within two months of the implementation of the concentration and shall provide the Commission with the information referred to in Article 3(2).

4. The Commission shall transmit to the competent authorities of the Member States all information received pursuant to paragraph 1 and shall publish annually the list of acquisitions of which it has been informed by the gatekeepers pursuant to that paragraph.

The Commission will take into account the legitimate interests of companies in protecting their trade secrets.

5. The competent authorities of the Member States may use the information received pursuant to paragraph 1 of this Article to request the Commission to examine the concentration in accordance with Article 22 of Regulation (EC) No 1189/2008.either139/2004.

Article 15

Audit obligation

1. Within six months of their designation pursuant to Article 3, gatekeepers shall submit to the Commission an independently audited description of the consumer profiling techniques they apply in their core platform services listed in the designation decision pursuant to Article 3(9). The Commission shall transmit that audited description to the European Data Protection Board.

2. The Commission may adopt an implementing act as referred to in point (g) of Article 46(1) to develop the audit methodology and procedure.

3. Gatekeepers shall make public a summary of the audited description referred to in paragraph 1. In doing so, they shall be entitled to consider the need to respect their trade secrets. Gatekeepers shall update the description and the summary at least once a year.

CHAPTER IV

MARKET RESEARCH

Article 16

Opening a market investigation

1. Where the Commission intends to carry out a market investigation with a view to possible decisions under Articles 17, 18 and 19, it shall adopt a decision to initiate a market investigation.

2. Notwithstanding paragraph 1, the Commission may exercise its investigative powers under this Regulation before initiating a market investigation pursuant to that paragraph.

3. The decision referred to in paragraph 1 shall specify:

a) the date of opening of the market investigation;

b) the description of the problem to which the market research refers;

c) the purpose of the market research.

4. The Commission may reopen a market investigation that has been concluded when:

(a) there has been a significant change in any of the facts on which any decision taken under Articles 17, 18 or 19 is based, or

(b) the decision taken pursuant to Articles 17, 18 or 19 is based on incomplete, incorrect or misleading information.

5. The Commission may request one or more competent national authorities to assist it in its market investigation.

Article 17

Market research to designate gatekeepers

1. The Commission may carry out a market investigation in order to examine whether an undertaking providing core platform services should be designated as a gatekeeper pursuant to Article 3(8) or to determine which core platform services should be listed in the designation decision pursuant to Article 3(9). The Commission shall endeavour to conclude its market investigation within 12 months from the date referred to in point (a) of Article 16(3). In order to conclude its market investigation, the Commission shall adopt a decision by means of an implementing act. That implementing act shall be adopted in accordance with the advisory procedure referred to in Article 50(2).

2. While carrying out a market investigation pursuant to paragraph 1 of this Article, the Commission shall endeavour to communicate its preliminary findings to the undertaking providing core platform services concerned within six months of the date referred to in point (a) of Article 16(3). In the preliminary findings, the Commission shall explain whether it considers it appropriate, on a provisional basis, to designate that undertaking as a gatekeeper pursuant to Article 3(8) and to list the relevant core platform services pursuant to Article 3(9).

3. Where the undertaking providing core platform services complies with the thresholds set out in Article 3(2) but has submitted sufficiently substantiated arguments in accordance with Article 3(5) which have manifestly called into question the presumption in Article 3(2), the Commission shall endeavour to conclude the market investigation within five months from the date referred to in Article 16(3)(a).

In such a case, the Commission shall endeavour to communicate its preliminary findings pursuant to paragraph 2 of this Article to the undertaking concerned within three months of the date referred to in Article 16(3)(a).

4. Where the Commission, pursuant to Article 3(8), designates as a gatekeeper an undertaking providing basic platform services which does not yet enjoy a strong and lasting operational position but which is expected to enjoy such a position in the near future, it may declare applicable to that gatekeeper only one or more of the obligations set out in Article 5(3) to (6), and in Article 6(4), (7), (9), (10) and (13), as specified in the designation decision. The Commission shall only declare applicable those obligations which are appropriate and necessary to prevent the gatekeeper concerned from achieving, by unfair means, a strong and lasting operational position. The Commission shall review such designation in accordance with the procedure referred to in Article 4.

Article 18

Market research on a systematic non-compliance

1. The Commission may carry out a market investigation in order to examine whether a gatekeeper has systematically failed to comply. The Commission shall conclude that market investigation within 12 months from the date referred to in point (a) of Article 16(3). The Commission shall adopt, by means of an implementing act, the decision to close the market investigation. Where the market investigation shows that a gatekeeper has systematically failed to comply with one or more of the obligations set out in Articles 5, 6 or 7 and has maintained, strengthened or extended its position as a gatekeeper in relation to the requirements set out in Article 3(1), the Commission may adopt an implementing act imposing on that gatekeeper any behavioural or structural corrective measures that are proportionate and necessary to ensure effective compliance with this Regulation. That implementing act shall be adopted in accordance with the advisory procedure referred to in Article 50(2).

2. The remedial measure imposed pursuant to paragraph 1 of this Article, to the extent that it is proportionate and necessary to maintain or restore fairness and contestability where these have been affected by a systematic non-compliance, may include a prohibition, for a limited period, on the gatekeeper from taking part in a concentration within the meaning of Article 3 of Regulation (EC) No 1079/2008.either139/2004 in relation to basic platform services, other services provided in the digital sector or services enabling the collection of data that have been affected by systematic non-compliance.

3. A gatekeeper shall be deemed to have committed a systematic failure to comply with the obligations set out in Articles 5, 6 and 7 where the Commission has adopted at least three failure-to-comply decisions pursuant to Article 29 against the gatekeeper concerned in relation to any of its core platform services within the eight years preceding the adoption of the decision to open a market investigation in view of the possible adoption of a decision pursuant to this Article.

4. The Commission shall communicate its preliminary findings to the gatekeeper concerned within six months of the date referred to in point (a) of Article 16(3). In its preliminary findings, the Commission shall explain whether it considers, on a preliminary basis, that the conditions of paragraph 1 of this Article are met and which corrective measure(s) it considers, on a preliminary basis, to be necessary and proportionate.

5. In order to enable interested third parties to make comments effectively, the Commission shall, at the same time as it communicates its preliminary findings concerning the gatekeeper pursuant to paragraph 4, or as soon as possible after communicating them, publish a non-confidential summary of the case and the corrective measures it is considering. The Commission shall set a reasonable period for the submission of such comments.

6. Where the Commission is to adopt a decision pursuant to paragraph 1 of this Article making binding the commitments offered by the gatekeeper pursuant to Article 25, it shall publish a non-confidential summary of the case and the main content of those commitments. Interested third parties may submit their observations within a reasonable period to be determined by the Commission.

7. While the market investigation is being carried out, the Commission may extend its duration where such extension is justified by objective reasons and is proportionate. The extension may apply to the period within which the Commission is required to draw up its preliminary findings or to the period for the adoption of the final decision. The total duration of any extension or extensions under this paragraph shall not exceed six months.

8. In order to ensure that the gatekeeper effectively complies with the obligations set out in Articles 5, 6 and 7, the Commission shall periodically review the corrective measures it imposes in accordance with paragraphs 1 and 2 of this Article. The Commission shall have the power to amend such corrective measures if, following a new market investigation, it finds that they are not effective.

Article 19

Market research on new services and new practices

1. The Commission may carry out a market investigation with a view to examining whether one or more digital services should be added to the list of core platform services set out in Article 2(2), or with a view to identifying practices that limit the contestability of core platform services or that are unfair and are not effectively addressed by this Regulation. In its examination, the Commission shall take into account the relevant findings of the proceedings conducted under Articles 101 and 102 TFEU in relation to digital markets, as well as any other relevant circumstances.

2. When carrying out a market investigation pursuant to paragraph 1, the Commission may consult third parties, including professional users and end-users of digital sector services under investigation and professional users and end-users subject to practices under investigation.

3. The Commission shall publish its findings in a report within eighteen months of the date referred to in Article 16(3)(a).

This report shall be submitted to the European Parliament and the Council and, where appropriate, shall be accompanied by:

(a) a legislative proposal to amend this Regulation to include additional digital sector services in the list of core platform services set out in Article 2(2) or to include new obligations in Chapter III, or

(b) a draft delegated act supplementing this Regulation as regards the obligations set out in Articles 5 and 6, or a draft delegated act amending or supplementing this Regulation as regards the obligations provided for in Article 7, as provided for in Article 12.

Where appropriate, the legislative proposal to amend this Regulation pursuant to point (a) of the second subparagraph may also propose the deletion of services from the list of core platform services set out in Article 2(2) or the deletion of existing obligations under Articles 5, 6 or 7.

CHAPTER V

RESEARCH, EXECUTION AND SUPERVISION SKILLS

Article 20

Initiation of proceedings

1. Where the Commission intends to initiate a procedure with a view to the possible adoption of decisions in accordance with Articles 8, 29 and 30, it shall adopt a decision to initiate a procedure.

2. Notwithstanding paragraph 1, the Commission may exercise its investigative powers under this Regulation before initiating a procedure under that paragraph.

Article 21

Requests for information

1. In order to carry out its tasks under this Regulation, the Commission may, by means of a simple request or a decision, require undertakings and associations of undertakings to provide all necessary information. The Commission may also, by means of a simple request or a decision, require access to any of the undertakings' data or algorithms and information on testing, as well as request explanations on them.

2. When sending a simple request for information to an undertaking or association of undertakings, the Commission shall indicate the legal basis and purpose of the request, specify what information is required and set out the time limit within which the information must be provided, as well as any penalties provided for in Article 30 applicable to providing incomplete, incorrect or misleading information or explanations.

3. Where the Commission, by means of a decision, requires undertakings and associations of undertakings to provide information, it shall indicate the purpose of the request, specify what information is required and set the time limit within which the information must be provided. Where the Commission requires undertakings to provide access to any data and algorithms and information on tests, it shall indicate the purpose of the request and set the time limit within which it must be provided. It shall also indicate the penalties provided for in Article 30 and indicate or impose any periodic penalty payments provided for in Article 31. It shall also indicate the right to have the decision reviewed by the Court of Justice.

4. Firms or associations of firms or their representatives shall provide the requested information on behalf of the firm or association of firms concerned. Duly authorised lawyers may provide the information on behalf of their clients. The latter shall remain fully liable if the information provided is incomplete, incorrect or misleading.

5. At the request of the Commission, the competent authorities of the Member States shall provide the Commission with all the information in their possession necessary for the performance of the tasks conferred upon it by this Regulation.

Article 22

Competence in conducting interviews and taking statements

1. In order to carry out its functions under this Regulation, the Commission may interview any natural or legal person who gives his or her consent to be interviewed, for the purposes of gathering information, in relation to the subject matter of an investigation. The Commission shall have the power to record such interviews by any technical means.

2. Where an interview pursuant to paragraph 1 of this Article takes place on the premises of an undertaking, the Commission shall inform the competent national authority of the Member State responsible for enforcing the rules referred to in Article 1(6) and on whose territory the interview takes place. At the request of that authority, its officials may assist officials and other persons accompanying them with authorisation from the Commission to conduct the interview.

Article 23

Competencies to carry out inspections

1. In order to carry out its functions under this Regulation, the Commission may carry out all necessary inspections of undertakings or associations of undertakings.

2. Officials and other persons accompanying them with authorization from the Commission to carry out an inspection shall be empowered to:

a) access to any premises, land and means of transport of companies and associations of companies;

b) examine books and other documents relating to business activities, regardless of the medium in which they are stored;

c) make or obtain copies or extracts, in any format, of such books or documents;

(d) require the company or association of companies to provide access to and explanations regarding its organisation, operation, computer system, algorithms, data management and business practices, and record or document the explanations obtained by any technical means;

e) seal all premises and books or documents of the company for the duration of the inspection and to the extent necessary for it;

f) request from any representative or member of staff of the company or association of companies explanations on facts or documents related to the object and purpose of the inspection and record their responses by any technical means.

3. In order to carry out inspections, the Commission may request the assistance of auditors or experts appointed by the Commission in accordance with Article 26(2) and the assistance of the competent national authority of the Member State in whose territory the inspection is to be carried out that is responsible for enforcing the rules referred to in Article 1(6).

4. During inspections, the Commission, auditors or experts appointed by it and the national competent authority of the Member State in whose territory the inspection is to be carried out and which is responsible for enforcing the rules referred to in Article 1(6) may require the undertaking or association of undertakings to provide access to and explanations concerning its organisation, operation, IT system, algorithms, data management and business practices. The Commission and auditors or experts appointed by it and the national competent authority of the Member State in whose territory the inspection is to be carried out and which is responsible for enforcing the rules referred to in Article 1(6) may put questions to any representative or member of staff.

5. Officials and other persons accompanying them with authorisation from the Commission to carry out an inspection shall exercise their powers upon presentation of a written authorisation stating the subject matter and purpose of the inspection and the penalties provided for in Article 30 in the event that the books or other documents required relating to the business activity are submitted incompletely or in the event that the answers to the questions put in application of paragraphs 2 and 4 of this Article are inaccurate or misleading. The Commission shall notify the competent national authority of the Member State responsible for enforcing the rules referred to in Article 1(6) in whose territory the inspection is to be carried out in good time of the inspection.

6. Undertakings or associations of undertakings shall be required to submit to an inspection ordered by a decision of the Commission. The decision shall specify the subject matter and purpose of the inspection, set the date of commencement and indicate the penalties and periodic penalty payments provided for in Articles 30 and 31 respectively, as well as the right to have the decision reviewed by the Court of Justice.

7. Officials of the competent national authority of the Member State in whose territory the inspection is to be carried out and responsible for enforcing the rules referred to in Article 1(6) and any person authorised or appointed by that national authority shall, at the request of that authority or of the Commission, actively assist officials and other persons accompanying them with the authorisation of the Commission. To this end, they shall have the powers laid down in paragraphs 2 and 4 of this Article.

8. Where officials and other persons accompanying them with the authorisation of the Commission find that an undertaking or association of undertakings is opposing an inspection ordered under this Article, the Member State concerned shall provide them with the necessary assistance, requiring, where appropriate, the action of the police or an equivalent security force or body, to enable them to carry out the inspection.

9. Where, under national law, the assistance provided for in paragraph 8 of this Article requires judicial authorisation, the Commission or the competent national authority of the Member State responsible for enforcing the rules referred to in Article 1(6) or officials authorised by those authorities shall request such authorisation. Such authorisation may also be requested as a precautionary measure.

10. Where the authorisation provided for in paragraph 9 of this Article is requested, the national judicial authority shall verify the authenticity of the Commission's decision and that the coercive measures envisaged are neither arbitrary nor disproportionate to the subject matter of the inspection. In its review of the proportionality of the coercive measures, the national judicial authority may ask the Commission, directly or through the competent national authority of the Member State responsible for enforcing the rules referred to in Article 1(6), for detailed explanations concerning in particular the grounds on which the Commission suspects that this Regulation has been infringed, as well as the gravity of the alleged infringement and the nature of the involvement of the undertaking concerned. However, the national judicial authority may not impose the necessity of the inspection or require the production of information contained in the Commission's file. The legality of the Commission's decision shall be subject to review only by the Court of Justice.

Article 24

Precautionary measures

In case of urgency due to the risk of serious and irreparable damage to professional users or end-users of gatekeepers, the Commission may adopt an implementing act ordering precautionary measures against a gatekeeper on the basis of a verification of the existence ofprima facieof an infringement of Articles 5, 6 or 7. That implementing act shall be adopted only in the framework of a procedure initiated with a view to the possible adoption of a decision pursuant to Article 29(1). It shall apply only for a specified period of time and may be renewed to the extent necessary and appropriate. That implementing act shall be adopted in accordance with the advisory procedure referred to in Article 50(2).

Article 25

Commitments

1. Where, during the procedure referred to in Article 18, the gatekeeper offers to make commitments for the relevant core platform services in order to ensure compliance with the obligations set out in Articles 5, 6 and 7, the Commission may adopt an implementing act making those commitments binding on that gatekeeper and declaring that there are no further grounds for action. That implementing act shall be adopted in accordance with the advisory procedure referred to in Article 50(2).

2. The Commission may, upon request or on its own initiative, reopen the procedure where:

a) there has been a change in the factual situation with respect to an essential element of the decision;

b) the gatekeeper concerned fails to fulfil its obligations;

c) the decision was based on incomplete, inaccurate or misleading information provided by the parties;

d) the commitments are not made effective.

3. If the Commission considers that the commitments submitted by the gatekeeper concerned cannot ensure effective compliance with the obligations set out in Articles 5, 6 and 7, it shall explain the reasons for not making those commitments binding in the relevant decision closing the procedure.

Article 26

Control of obligations and measures

1. The Commission shall take the necessary action to monitor the effective application of and compliance with the obligations laid down in Articles 5, 6 and 7 and with the decisions taken pursuant to Articles 8, 18, 24, 25 and 29. Such action shall include, in particular, the imposition on gatekeepers of the obligation to retain all documents deemed relevant to verify the application of and compliance with those obligations and decisions.

2. The actions provided for in paragraph 1 may include the appointment of independent external experts and auditors, as well as the appointment of officials of the competent national authorities of the Member States, to assist the Commission in monitoring the obligations and measures and to provide it with specific expertise or knowledge.

Article 27

Third party information

1. Any third party, including professional users, competitors or end-users of core platform services listed in the designation decision pursuant to Article 3(9), as well as their representatives, may report to the competent national authority of the Member State responsible for enforcing the rules referred to in Article 1(6), or directly to the Commission, any practice or behaviour of gatekeepers falling within the scope of this Regulation.

2. The competent national authority of the Member State responsible for enforcing the rules referred to in Article 1(6) and the Commission shall have full discretion as regards appropriate measures and shall not be obliged to follow up on the information received.

3. Where the competent national authority of the Member State responsible for enforcing the rules referred to in Article 1(6) determines, on the basis of information received pursuant to paragraph 1 of this Article, that there may be a problem of non-compliance with this Regulation, it shall transmit that information to the Commission.

Article 28

Compliance Check Function

1. Gatekeepers shall establish a compliance checking function that is independent of their operational functions and shall consist of one or more compliance officers, including the person responsible for the compliance checking function.

2. The gatekeeper shall ensure that the enforcement function referred to in paragraph 1 has sufficient authority, size and resources, and access to the gatekeeper's governing body, to monitor the gatekeeper's compliance with this Regulation.

3. The governing body of the gatekeeper shall ensure that the verification officers appointed pursuant to paragraph 1 have the necessary professional qualifications, knowledge, experience and ability to perform the functions referred to in paragraph 5.

The governing body of the gatekeeper shall also ensure that the person responsible for the compliance check function is an independent senior manager with specific responsibility for the compliance check function.

4. The person responsible for the enforcement function shall report directly to the governing body of the gatekeeper and may communicate concerns and warnings to the gatekeeper where there is a risk of non-compliance with this Regulation, without prejudice to the responsibilities of the governing body in its oversight and management functions.

The person responsible for the compliance check function shall not be replaced without the prior approval of the gatekeeper's governing body.

5. The compliance officers appointed by the gatekeeper pursuant to paragraph 1 shall have the following duties:

(a) organise, supervise and control the measures and activities of gatekeepers aimed at ensuring compliance with this Regulation;

b) inform and advise the management and employees of the gatekeeper regarding compliance with this Regulation;

(c) where appropriate, monitor compliance with the commitments made binding pursuant to Article 25, without prejudice to the Commission's ability to appoint independent external experts in accordance with Article 26(2);

(d) cooperate with the Commission for the purposes of this Regulation.

6. Gatekeepers shall communicate to the Commission the name and contact details of the person responsible for the compliance check function.

7. The governing body of the gatekeeper shall define, oversee and be responsible for the implementation of the gatekeeper's governance arrangements that ensure the independence of the compliance function, including the allocation of responsibilities within the gatekeeper's organisation and the prevention of conflicts of interest.

8. The governing body shall approve and periodically review, at least once a year, the strategies and policies aimed at assuming, managing and controlling compliance with this Regulation.

9. The management body shall devote sufficient time to the management and monitoring of compliance with this Regulation. It shall actively participate in decisions relating to the management and implementation of this Regulation and shall ensure that adequate resources are allocated to these tasks.

Article 29

Breach

1. The Commission shall adopt an implementing act setting out its findings on non-compliance (hereinafter referred to as the 'non-compliance decision') where it finds that a gatekeeper does not comply with one or more of the following conditions:

a) any of the obligations set out in Articles 5, 6 or 7;

(b) the measures specified by the Commission in a decision adopted pursuant to Article 8(2);

(c) corrective measures imposed pursuant to Article 18(1);

(d) the precautionary measures ordered pursuant to Article 24, or

(e) commitments that have been made legally binding pursuant to Article 25.

Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 50(2).

2. The Commission shall endeavour to adopt its decision on infringement within twelve months of the initiation of the procedure pursuant to Article 20.

3. Before adopting a decision on non-compliance, the Commission shall communicate its preliminary findings to the gatekeeper concerned. In those preliminary findings, the Commission shall explain the measures it is considering taking or considers that the gatekeeper should take in order to effectively address the preliminary findings.

4. The Commission may consult third parties when it intends to adopt a decision on non-compliance.

5. In the decision of non-compliance, the Commission shall order the gatekeeper to cease the non-compliance within an appropriate period and to provide explanations on how it intends to comply with that decision.

6. The gatekeeper shall provide the Commission with a description of the measures it has taken to ensure compliance with the non-compliance decision.

7. Where the Commission decides not to adopt a decision on non-compliance, it shall terminate the procedure by means of a decision.

Article 30

Penalty fines

1. In its decision on non-compliance, the Commission may impose on a gatekeeper fines not exceeding 10 % of its total worldwide turnover in the preceding financial year where it has found that the gatekeeper is failing, intentionally or through negligence:

a) any of the obligations set out in Articles 5, 6 and 7;

(b) the measures specified by the Commission in a decision adopted pursuant to Article 8(2);

(c) corrective measures imposed pursuant to Article 18(1);

(d) the precautionary measures ordered pursuant to Article 24, or

(e) commitments that have been made legally binding pursuant to Article 25.

2. By way of derogation from paragraph 1 of this Article, in the infringement decision, the Commission may impose on a gatekeeper fines of up to 20 % of its total worldwide turnover in the preceding financial year where it has found in a breach decision that a gatekeeper has committed the same infringement of an obligation laid down in Article 5, 6 or 7 in relation to the same core platform service as has already been found in a breach decision taken during the previous eight years, or a similar infringement.

3. The Commission may adopt a decision imposing on undertakings, including where applicable gatekeepers, and associations of undertakings fines not exceeding 1 % of their total worldwide turnover in the preceding financial year where, intentionally or negligently:

(a) fail to provide within the deadline the information necessary to verify their designation as gatekeepers pursuant to Article 3 or provide incorrect, incomplete or misleading information;

(b) fail to comply with the obligation to notify the Commission pursuant to Article 3(3);

(c) fail to notify the information required under Article 14 or the information they provide under that Article is incorrect, incomplete or misleading;

(d) they do not provide the description required under Article 15 or the information they provide is incorrect, incomplete or misleading;

(e) do not provide access to databases, algorithms or information on tests in response to a request pursuant to Article 21(3);

(f) fail to provide within the period specified in Article 21(3) the information requested or provide incorrect, incomplete or misleading information or explanations requested pursuant to Article 21 or provided in an interview pursuant to Article 22;

(g) fail to rectify, within a period set by the Commission, incorrect, incomplete or misleading information provided by a representative or a member of staff, or fail or refuse to provide complete information on facts relating to the subject matter and purpose of an inspection pursuant to Article 23;

(h) refuse to submit to an inspection pursuant to Article 23;

(i) fail to comply with the obligations imposed by the Commission pursuant to Article 26;

(j) do not establish the compliance verification function in accordance with Article 28, or

(k) do not meet the conditions for access to the Commission's file pursuant to Article 34(4).

4. When fixing the amount of a fine, the Commission shall take into account the gravity, duration, repetition and, in the case of penalties imposed pursuant to paragraph 3, the delay caused to the procedure.

5. Where a fine is imposed on an association of undertakings taking into account the worldwide turnover of its members and the association is not solvent, it shall be obliged to ask its members for contributions to cover the amount of the fine.

Where such contributions have not been made to the association of undertakings within a period fixed by the Commission, the Commission may require payment of the fine directly from any of the undertakings whose representatives have been members of the relevant governing bodies of that association.

After having demanded payment in accordance with the second paragraph, the Commission may demand payment of the balance from any of the members of the association of undertakings, where this is necessary to ensure full payment of the fine.

However, the Commission shall not require payment under the second or third subparagraphs from undertakings which demonstrate that they have not implemented the decision of the association of undertakings which infringed this Regulation and that they were either unaware of its existence or had actively distanced themselves from it before the Commission initiated the procedure pursuant to Article 20.

The financial liability of each company for payment of the fine will not exceed 20% of its total worldwide turnover in the preceding financial year.

Article 31

Coercive fines

1. The Commission may adopt a decision imposing on undertakings, including, where applicable, gatekeepers, and associations of undertakings daily periodic penalty payments not exceeding 5 % of their average daily worldwide turnover in the preceding financial year, calculated from the date fixed by that decision, in order to oblige them to:

(a) comply with the measures specified by the Commission on the basis of a decision taken pursuant to Article 8(2);

b) comply with the decision taken pursuant to Article 18(1);

(c) provide correct and complete information within the time required by a request for information made by means of a decision adopted pursuant to Article 21;

(d) ensure access to databases, algorithms and information on tests in response to a request made pursuant to Article 21(3) and provide explanations thereon as requested by a decision taken pursuant to Article 21;

(e) submit to an inspection ordered by a decision taken pursuant to Article 23;

(f) comply with a decision ordering precautionary measures taken pursuant to Article 24;

(g) fulfil commitments that have been made legally binding by a decision adopted pursuant to Article 25(1);

(h) comply with a decision taken pursuant to Article 29(1).

2. Where undertakings, or associations of undertakings, have complied with the obligation which the periodic penalty payment was intended to enforce, the Commission may adopt an implementing act setting the definitive amount of the periodic penalty payment at a lower figure than that which would result from the original decision. That implementing act shall be adopted in accordance with the advisory procedure referred to in Article 50(2).

Article 32

Limitation periods for the imposition of sanctions

1. The powers conferred on the Commission by Articles 30 and 31 shall be subject to a limitation period of five years.

2. The period shall begin to run from the day on which the infringement is committed. However, in the case of continued or repeated infringements, the period shall begin to run from the day on which the infringement ceases.

3. Any measure taken by the Commission for the purposes of a market investigation or a procedure relating to an infringement shall interrupt the limitation period for the imposition of fines or periodic penalty payments. The limitation period shall be interrupted with effect from the date on which the action is notified to at least one undertaking or association of undertakings which has participated in the infringement. Actions interrupting the running of the period shall include, in particular, the following:

(a) requests for information from the Commission;

(b) written authorizations to carry out inspections issued by the Commission to its officials;

(c) the initiation of a procedure by the Commission pursuant to Article 20.

4. Following each interruption, the period shall start to run from the beginning. However, the limitation period shall expire at the latest on the day on which a period equal to twice the limitation period has elapsed without the Commission imposing a fine or periodic penalty payment. That period shall be extended by the period of suspension of the limitation period pursuant to paragraph 5.

5. The limitation period for the imposition of fines or periodic penalty payments shall be suspended while the Commission's decision is the subject of proceedings before the Court of Justice.

Article 33

Limitation periods for the execution of sanctions

1. The powers of the Commission to enforce decisions taken pursuant to Articles 30 and 31 shall be subject to a limitation period of five years.

2. The period shall begin to run from the day on which the decision becomes final.

3. The limitation period for the execution of sanctions shall be interrupted:

(a) by notification of a decision varying the initial amount of the fine or periodic penalty payment or rejecting a request for a variation, or

(b) by any act of the Commission or of a Member State acting at the request of the Commission which is intended to recover by enforcement the fine or periodic penalty payment.

4. After each interruption, the period will start counting from the beginning.

5. The limitation period for the execution of sanctions shall be suspended while:

a) the period granted for making the payment lasts, or

(b) the suspension of enforcement proceedings pursuant to a decision of the Court of Justice or a decision of a national court lasts.

Article 34

Right to be heard and access to the file

1. Before adopting a decision pursuant to Article 8, Article 9(1), Article 10(1), Articles 17, 18, 24, 25, 29, 30 and Article 31(2), the Commission shall give the gatekeeper or the undertaking or association of undertakings concerned the opportunity to be heard with regard to the following:

(a) the Commission's preliminary findings, including any matters to which the Commission has raised objections, and

(b) the measures which the Commission intends to take in the light of the preliminary findings pursuant to point (a) of this paragraph.

2. The gatekeepers, undertakings and associations of undertakings concerned may submit to the Commission their observations concerning the Commission's preliminary conclusions within a period to be set by the Commission in its preliminary conclusions, which may not be less than fourteen days.

3. The Commission shall base its decisions solely on preliminary findings, including any issues to which it has raised objections, on which the gatekeepers, undertakings and associations of undertakings concerned have been able to comment.

4. The rights of defence of the gatekeeper, undertaking or association of undertakings concerned shall be fully respected in any procedure. The gatekeeper, undertaking or association of undertakings concerned shall have the right to access the Commission's file under the conditions of disclosure, without prejudice to the legitimate interest of undertakings to protect their business secrets. In the event of a disagreement between the parties, the Commission may adopt decisions laying down such conditions of disclosure. The right of access to the Commission's file shall not extend to confidential information or internal documents of the Commission or of the competent authorities of the Member States. In particular, the right of access shall not extend to exchanges of correspondence between the Commission and the competent authorities of the Member States. Nothing in this paragraph shall prevent the Commission from disclosing and using information necessary to prove an infringement.

Article 35

Annual reports

1. The Commission shall submit to the European Parliament and to the Council an annual report on the application of this Regulation and the progress made towards achieving its objectives.

2. The report referred to in paragraph 1 shall include:

(a) a summary of the Commission's activities, including any measures or decisions taken and ongoing market investigations that are related to this Regulation;

(b) the conclusions drawn from monitoring compliance by gatekeepers with their obligations under this Regulation;

(c) an assessment of the audited description referred to in Article 15;

(d) an overview of the cooperation between the Commission and national authorities on this Regulation;

(e) an overview of the activities and tasks carried out by the High Level Group of Digital Regulators, indicating how its recommendations should be implemented with regard to the implementation of this Regulation.

3. The Commission shall publish the report on its website.

Article 36

Professional secrecy

1. Information collected pursuant to this Regulation shall be used for the purposes of this Regulation.

2. The information collected pursuant to Article 14 shall be used for the purposes of this Regulation, Regulation (EC) No.either139/2004 and national regulations on concentrations.

3. Information collected pursuant to Article 15 shall be used for the purposes of this Regulation and Regulation (EU) 2016/679.

4. Without prejudice to the exchange and use of information provided for the purposes of this Regulation pursuant to Articles 38, 39, 41 and 43, the Commission, the competent authorities of the Member States, their officials, agents and other persons working under the supervision of those authorities, and any natural or legal person, including auditors and experts appointed pursuant to Article 26(2), shall be required not to disclose information which they have collected or exchanged in application of this Regulation and which, by its nature, is covered by professional secrecy.

Article 37

Cooperation with national authorities

1. The Commission and the Member States shall work in close cooperation and coordinate their enforcement actions to ensure a consistent, effective and complementary implementation of the available legal instruments applicable to gatekeepers within the meaning of this Regulation.

2. Where appropriate, the Commission may consult national authorities on any matter relating to the application of this Regulation.

Article 38

Cooperation and coordination with the competent national authorities responsible for enforcing the rules in matters of competition

1. The Commission and the national competent authorities of the Member States responsible for enforcing the rules referred to in Article 1(6) shall cooperate and inform each other about their respective enforcement measures through the European Competition Network (ECN). They shall be empowered to communicate to each other any information on matters of fact and law, including confidential information. Where the competent authority is not a member of the ECN, the Commission shall make the necessary arrangements for cooperation and exchange of information on matters relating to the enforcement of this Regulation and the rules referred to in Article 1(6). The Commission may lay down such arrangements in an implementing act, as referred to in point (l) of Article 46(1).

2. Where the competent national authority of a Member State responsible for enforcing the rules referred to in Article 1(6) intends to initiate an investigation into gatekeepers on the basis of the national legislation referred to in Article 1(6), it shall inform the Commission in writing of its first formal investigative measure, before or immediately after the initiation of such measure. This information may also be made available to the competent national authorities of the other Member States responsible for enforcing the rules referred to in Article 1(6).

3. Where the competent national authority of a Member State responsible for enforcing the rules referred to in Article 1(6) intends to impose obligations on gatekeepers on the basis of the national legislation referred to in Article 1(6), it shall, not later than 30 days before their adoption, communicate to the Commission the draft measures, stating the reasons for the measure. In the case of precautionary measures, the competent national authority of a Member State responsible for enforcing the rules referred to in Article 1(6) shall communicate to the Commission the draft measures envisaged as soon as possible, and at the latest immediately after the adoption of those measures. This information may also be made available to the competent national authorities of the other Member States responsible for enforcing the rules referred to in Article 1(6).

4. The information mechanisms provided for in paragraphs 2 and 3 shall not apply to decisions envisaged under national rules on concentrations.

5. The information exchanged pursuant to paragraphs 1 to 3 of this Article shall only be exchanged and used for the purpose of coordinating the implementation of this Regulation and the rules referred to in Article 1(6).

6. The Commission may request the competent national authorities of the Member States responsible for enforcing the rules referred to in Article 1(6) to support any of its market investigations pursuant to this Regulation.

7. Where, under national law, the competent national authority of a Member State responsible for enforcing the rules referred to in Article 1(6) has the power and investigative powers to do so, it may, on its own initiative, investigate cases of possible non-compliance with Articles 5, 6 and 7 of this Regulation in its territory. Before taking the first formal investigative measure, that authority shall inform the Commission in writing.

The initiation of a procedure by the Commission pursuant to Article 20 shall deprive the competent national authorities of the Member States responsible for enforcing the rules referred to in Article 1(6) of the power to carry out such an investigation, or shall terminate such an investigation if it is already under way. Those authorities shall inform the Commission of the findings of such an investigation in order to support the Commission in its role as the sole authority responsible for enforcing this Regulation.

Article 39

Cooperation with national courts

1. In proceedings for the application of this Regulation, national courts may request the Commission to provide them with information in its possession or an opinion on questions relating to the application of this Regulation.

2. Member States shall forward to the Commission a copy of every judgment delivered by a national court or tribunal which gives a ruling on the application of this Regulation. That copy shall be forwarded without delay after the full text of the judgment has been notified to the parties.

3. Where the consistent application of this Regulation so requires, the Commission may, of its own motion, submit written observations to the national courts. It may also submit oral observations with the permission of the court concerned.

4. Solely for the purpose of preparing its observations, the Commission may request the national court concerned to transmit or ensure the transmission of all the documentation necessary for it to assess the case.

5. National courts shall not adopt decisions that are contrary to a decision taken by the Commission under this Regulation. They shall also avoid adopting decisions that may conflict with a decision envisaged by the Commission in proceedings which it has already initiated under this Regulation. To this end, it is for national courts to determine whether it is appropriate to stay their proceedings. This is without prejudice to the possibility for national courts to make a request for a preliminary ruling under Article 267 TFEU.

Article 40

The High Level Group

1. The Commission shall establish a High Level Group on Digital Markets Regulation (hereinafter referred to as the 'High Level Group').

2. The High Level Group shall be composed of the following European networks and bodies:

a) Body of European Regulators for Electronic Communications;

b) European Data Protection Supervisor and European Data Protection Board;

c) European Competition Network;

d) Network for cooperation on consumer protection, and

e) Group of European Regulatory Entities for Audiovisual Media Services.

3. The European networks and bodies referred to in paragraph 2 shall each have an equal number of representatives in the High Level Group. The membership of the High Level Group shall be no more than thirty.

4. The Commission shall provide secretariat services to the High-Level Group to facilitate its work. The High-Level Group shall be chaired by the Commission, which shall participate in its meetings. The High-Level Group shall meet at the request of the Commission at least once per calendar year. The Commission shall also convene a meeting of the group at the request of a majority of its members to address a specific issue.

5. The High Level Group may provide the Commission with advice and expertise in areas of competence of its members, in particular:

(a) advice and recommendations based on their expertise relevant to any matter of a general nature relating to the application or enforcement of this Regulation, or

b) advice and expertise that promote a coherent regulatory approach across different regulatory instruments.

6. The High Level Group may, in particular, identify and examine current and potential interactions between this Regulation and the sectoral rules applied by the national authorities making up the European networks and bodies referred to in paragraph 2, and submit an annual report to the Commission reflecting that examination and recording any inter-regulatory difficulties. That report may be accompanied by recommendations aimed at achieving synergies and coherent interdisciplinary approaches between the application of this Regulation and other sectoral rules. The report shall be brought to the attention of the European Parliament and the Council.

7. In the context of market investigations into new services and new practices, the High Level Group may provide expertise to the Commission on the need to add rules to this Regulation or to amend or remove rules from this Regulation in order to ensure that digital markets across the Union are contestable and fair.

Article 41

Market Research Request

1. Three or more Member States may request the Commission to open a market investigation pursuant to Article 17 on the grounds that there are reasonable grounds to believe that an undertaking should be designated as a gatekeeper.

2. One or more Member States may request the Commission to initiate a market investigation pursuant to Article 18 on the grounds that there are reasonable grounds to believe that a gatekeeper has systematically failed to comply with one or more of the obligations set out in Articles 5, 6 and 7 and has maintained, strengthened or extended its gatekeeper position in relation to the requirements set out in Article 3(1).

3. Three or more Member States may request the Commission to carry out a market investigation pursuant to Article 19 on the grounds that there are reasonable grounds to believe that:

a) one or more digital sector services must be added to the list of core platform services set out in Article 2, point 2, or

(b) one or more practices that could limit the contestability of core platform services or be unfair are not effectively addressed in this Regulation.

4. Member States shall provide evidence to support their applications, in accordance with paragraphs 1, 2 and 3. In the case of applications pursuant to paragraph 3, such evidence may include information on recently introduced offers of products, services,softwareor benefits that raise issues of contestability or fairness, whether applied in the context of existing core platform services or elsewhere.

5. Within four months of receipt of a request under this Article, the Commission shall examine whether there are reasonable grounds for initiating a market investigation pursuant to paragraphs 1, 2 or 3. The Commission shall publish the results of its examination.

Article 42

Representation actions

Directive (EU) 2020/1828 shall apply to representative actions brought against acts of gatekeepers that infringe the provisions of this Regulation and harm or are likely to harm the collective interests of consumers.

Article 43

Reporting infringements and protection of whistleblowers

Directive (EU) 2019/1937 shall apply to the reporting of all breaches of this Regulation and to the protection of persons who report such breaches.

CHAPTER VI

FINAL PROVISIONS

Article 44

Publication of decisions

1. The Commission shall publish the decisions it adopts pursuant to Articles 3 and 4, Article 8(2), Articles 9, 10, 16 to 20 and 24, Article 25(1) and Articles 29, 30 and 31. Such publication shall state the names of the parties and the main content of the decision, including any penalties imposed.

2. Publication must take into account the legitimate interest of the gatekeepers or any third parties in protecting their confidential information.

Article 45

Control of the Court of Justice

Pursuant to Article 261 TFEU, the Court of Justice has unlimited jurisdiction to review decisions by which the Commission has imposed fines or periodic penalty payments. It may annul, reduce or increase the fine or periodic penalty payment imposed.

Article 46

Development rules

1. The Commission may adopt implementing acts laying down detailed provisions for the implementation of the following:

(a) the form, content and other details of notifications and information submitted pursuant to Article 3;

(b) the form, content and other details of the technical measures that gatekeepers must implement to ensure compliance with Articles 5, 6 or 7;

(c) operational and technical aspects with a view to implementing interoperability of number-independent interpersonal communications services in accordance with Article 7;

(d) the form, content and other details of the reasoned request pursuant to Article 8, paragraph 3;

(e) the form, content and other details of the reasoned requests pursuant to Articles 9 and 10;

(f) the form, content and other details of regulatory reports submitted pursuant to Article 11;

(g) the methodology and procedure for the audited description of the techniques used for consumer profiling referred to in Article 15(1). When drawing up a draft implementing act for these purposes, the Commission shall consult the European Data Protection Supervisor and may consult the European Data Protection Board, civil society and other relevant experts;

(h) the form, content and other details of notifications and information submitted pursuant to Articles 14 and 15;

(i) the practical arrangements for the procedures relating to market investigations pursuant to Articles 17, 18 and 19 and the procedures pursuant to Articles 24, 25 and 29;

(j) the practical aspects of exercising the right to be heard provided for in Article 34;

(k) the practical aspects of the disclosure conditions provided for in Article 34;

(l) the practical aspects of cooperation and coordination between the Commission and the national authorities referred to in Articles 37 and 38, and

m) the practical aspects of calculating and extending deadlines.

2. The implementing acts referred to in points (a) to (k) and (m) of paragraph 1 of this Article shall be adopted in accordance with the advisory procedure referred to in Article 50(2).

The implementing act referred to in point (l) of paragraph 1 of this Article shall be adopted in accordance with the examination procedure referred to in Article 50(3).

3. Before adopting any implementing act pursuant to paragraph 1, the Commission shall publish a draft of the act and invite all interested parties to submit their comments within a period of not less than one month.

Article 47

Guidelines

The Commission may adopt guidelines on any aspect of this Regulation in order to facilitate its effective application and enforcement.

Article 48

Standardization

Where appropriate and necessary, the Commission may instruct European standardisation organisations to facilitate compliance with the obligations laid down in this Regulation by developing appropriate standards.

Article 49

Exercise of delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Article 3(6) and (7) and in Article 12(1), (3) and (4) shall be conferred on the Commission for a period of five years from 1 November 2022. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

3. The delegation of power referred to in Article 3(6) and (7) and in Article 12(1), (3) and (4) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect on the day following that of its publication in the European Parliament. Official Journal of the European Unionor at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6. A delegated act adopted pursuant to Article 3(6) and (7) and Article 12(1), (3) and (4) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Article 50

Committee procedure

1. The Commission shall be assisted by a committee ('Advisory Committee on Digital Markets'). That committee shall be a committee within the meaning of Regulation (EU) No 1799/2008.either182/2011.

2. Where reference is made to this paragraph, Article 4 of Regulation (EU) shall apply.
n.either182/2011.

Where the opinion of the committee is to be obtained by written procedure, the procedure shall be terminated without result if, within the period for issuing the opinion, the chairman of the committee so decides or if a simple majority of the members of the committee so request.

3. Where reference is made to this paragraph, Article 5 of Regulation (EU) shall apply.
n.either182/2011.

4. The Commission shall communicate the opinion of the committee to the addressee of an individual decision, together with that decision. It shall make the opinion public together with the individual decision, taking into account the legitimate interest in the protection of professional secrecy.

Article 51

Amendment to Directive (EU) 2019/1937

In Part I, Section J of the Annex to Directive (EU) 2019/1937, the following paragraph is added:

«iv) Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on markets and fair competition law in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Regulation) (OJ L 265, 21.9.2022, p. 1).».

Article 52

Amendment to Directive (EU) 2020/1828

The following point is added to Annex I of Directive (EU) 2020/1828:

«67) Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on markets and fair competition law in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Regulation) (OJ L 265, 21.9.2022, p. 1).».

Article 53

Revision

1. By 3 May 2026, and every three years thereafter, the Commission shall evaluate this Regulation and report to the European Parliament, the Council and the European Economic and Social Committee.

2. The evaluations shall assess both whether the objectives of this Regulation, namely ensuring fair and contestable markets, have been achieved and the impact of this Regulation on business users, in particular SMEs, and end-users. In addition, the Commission shall assess whether the scope of Article 7 can be extended to online social network services.

3. The evaluations shall establish whether any amendments to the rules are necessary, in particular in relation to the list of core platform services set out in point (2) of Article 2 or to the obligations set out in Articles 5, 6 and 7 and their implementation, in order to ensure that digital markets across the Union are contestable and fair. Following the evaluations, the Commission shall take appropriate measures, which may include legislative proposals.

4. The competent authorities of the Member States shall provide the Commission with all relevant information at their disposal which it may require in order to draw up the report referred to in paragraph 1.

Article 54

Entry into force and application

This Regulation shall enter into force on the twentieth day following its publication in theOfficial Journal of the European Union.

It will apply from May 2, 2023.

However, Article 3, paragraphs 6 and 7, and Articles 40, 46, 47, 48, 49 and 50 shall apply from 1 November 2022 and Article 42 and Article 43 shall apply from 25 June 2023.

However, if the date of 25 June 2023 is earlier than the date of application referred to in the second paragraph of this Article, the application of Article 42 and Article 43 shall be deferred until the date of application referred to in the second paragraph of this Article.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Strasbourg, 14 September 2022.

By the European Parliament	By the Council
The President	The President
R. METSOLA	Mr. BEK

EXHIBIT

A. “General Considerations”

1. The purpose of this Annex is to establish a methodology for determining and calculating the ‘active end-users’ and ‘active business users’ of each core platform service, as listed in point (2) of Article 2. It provides a reference point for an undertaking to assess whether its core platform services meet the quantitative thresholds set out in point (b) of Article 3(2); if so, they would be presumed to meet the requirement of point (b) of Article 3(1). That reference point will therefore also be relevant for any broader assessment under Article 3(8). It is the responsibility of the undertaking to arrive at the best possible approximation, in line with the common principles and specific methodology set out in this Annex. Nothing in this Annex prevents the Commission, within the time limits set out in the relevant provisions of this Regulation, from requiring an undertaking providing core platform services to provide the information necessary to determine and calculate ‘active end-users’ and ‘active business users’. Nothing in this Annex should be considered a legal basis for tracking users. The methodology set out in this Annex is also without prejudice to the obligations set out in this Regulation, in particular in Article 3(3) and (8) and in Article 13(3). In particular, the necessary compliance with Article 13(3) also entails determining and calculating ‘active end-users’ and ‘active business users’ on the basis of an accurate measurement or the best available approximation, in line with the actual determination and calculation capabilities available to the undertaking providing core platform services at the time in question. Such measurements or the best available approximation shall be consistent with and include the data reported pursuant to Article 15.

2. Article 2, points 20 and 21, contain the definitions of “end user” and “professional user”, which are common to all basic platform services.

3. For the purpose of determining and calculating the number of “active end-users” and “active business users”, this Annex refers to the concept of “unique users”. The concept of “unique users” includes “active end-users” and “active business users” of the relevant core platform service, counted only once during a given period of time (one month for “active end-users” and one year for “active business users”), irrespective of the number of times they have interacted with that core platform service during that period. This is without prejudice to the fact that the same natural or legal person may simultaneously be an active end-user and an active business user of different core platform services.

B. “Active end users”

1. The number of “unique users” in relation to “active end users” shall be determined on the basis of the most accurate count reported by the company providing basic platform services, specifically:

   a. The collection of data on the use of core platform services in environments where registration or login is required is considered to present, in principle, the lowest risk of duplication, for example in relation to user behaviour across devices or platforms. For this reason, the Company will present anonymised aggregated data on the number of unique end users of each core platform service, taken from environments where registration or login is required, if such data exists.

   b. For core platform services that are also accessed by end users outside of registration/login environments, the Company will additionally present anonymized aggregated data on the number of unique end users of the relevant core platform service, based on an alternative count that also captures end users outside of registration/login environments, for example based on IP addresses, session IDs in the form ofcookiesor other identifiers, such as radio frequency identification tags, provided that such addresses or identifiers are objectively necessary for the provision of basic platform services.

2. The number of “monthly active end-users” is set based on the average number of monthly active end-users for the majority of the year. The term “the majority of the year” is intended to allow a provider of core platform services to discount outliers in a given year.

Outliers refer, as the name suggests, to numbers that are significantly outside of normal, expected numbers. A dramatic and unexpected rise or fall in user engagement during a single month of the year is an example of what might constitute an outlier. Numbers related to events that occur every year, such as annual sales promotions, are not outliers.

C. “Active professional users”

The number of “unique users” in relation to “active business users” shall be determined, where applicable, at the account level, where each distinct business account associated with the use of a core platform service provided by the undertaking is considered to be a unique business user of the respective core platform service. If the concept of “business account” is not applicable to a particular core platform service, the number of unique business users shall be determined by the undertaking providing the core platform service in question with reference to the relevant undertaking.

D. «Presentation of information»

1. It shall be the responsibility of the undertaking that, pursuant to Article 3(3), submits to the Commission the information relating to the number of active end-users and active business users per basic platform service to ensure the completeness and accuracy of that information. In this regard:

   a. It shall be the Company's responsibility to provide data for the respective Platform Core Service that avoids under- or over-estimation of the number of active end users and active business users (for example, if users access the Platform Core Services through different platforms or devices).

   b. It shall be the responsibility of the Company to provide precise and concise explanations on the methodology used to obtain the information and on any risk of underestimation or overestimation of the number of active end users and active professional users of the respective basic platform service, as well as on the solutions adopted to address such risk.

   c. The undertaking shall provide data based on an alternative calculation where the Commission has doubts about the accuracy of the data provided by the undertaking providing core platform services.

2. For the purposes of calculating the number of "active end users" and "active business users":

   a. The provider of core platform services shall not consider core platform services belonging to the same category of core platform services pursuant to point 2 of Article 2 to be different on the basis of the fact that they are provided using different domain names, whether territorial top-level domains (ccTLDs) or generic top-level domains (gTLDs), or any geographical attribute.

   b. The provider of core platform services shall consider as different core platform services those that are used for different purposes by its end-users, business users or both, even if they happen to be the same end-users or business users and even if they belong to the same category of core platform services pursuant to Article 2, point 2.

   c. The company providing basic platform services will consider as different basic platform services those services that the company in question offers in an integrated manner, but that:

      (i) do not belong to the same category of basic platform services in accordance with Article 2, point 2, or

      (ii) are used for different purposes by their end-users, business users or both, even if they happen to be the same end-users and business users and even if they belong to the same category of basic platform services pursuant to Article 2, point 2.

E. “Specific definitions”

The table below sets out specific definitions of “active end users” and “active business users” for each core platform service.

Basic platform services	Active end users	Active professional users
Online brokerage services	Number of unique end users who have interacted with the online intermediation service at least once during the month, for example by actively logging in, making a query, clicking, scrolling down the page or transacting through the online intermediation service at least once during the month.	Number of unique business users who have had at least one item listed on the online brokerage service during the entire year or completed a transaction enabled by the online brokerage service during the year.
Online Search Engines	Number of unique end users who have interacted with the online search engine at least once during the month, for example by making a query.	Number of unique business users with professional websites (i.e. websites used in a commercial or professional capacity) added to or already listed in the online search engine index during the year.
Online social networking services	Number of unique end users who have interacted with the online social networking service at least once during the month, for example by actively logging in, opening a page, scrolling within a window, clicking, liking, querying, posting or commenting.	Number of unique business users who have advertised a product or service or have a business account on the online social networking service and who have interacted in some way with the online social networking service at least once during the year, such as by actively logging in, opening a page, scrolling within a window, clicking, liking, querying, posting, commenting, or using the tools available to businesses.
Video sharing platform services	Number of unique end users who have interacted with the video sharing platform service at least once during the month, for example by playing a piece of audiovisual content, making a query or uploading audiovisual content, including user-generated videos.	Number of unique business users who have provided at least one item of audiovisual content uploaded or played on the video sharing platform service during the year.
Number-independent interpersonal communications services	Number of unique end users who have initiated a communication or otherwise participated in a communication through the number-independent interpersonal communications service at least once during the month.	Number of unique business users who have used a business account or who have initiated or otherwise participated in a communication through the number-independent interpersonal communications service to communicate directly with an end user at least once during the year.
Operating systems	Number of unique end users who have used a device with the operating system and activated, updated, or used it at least once during the month.	Number of unique developers who have published, updated or offered at least one computer application or computer program that uses the programming language or any development tool of the operating system, or runs in any way on the operating system during the year.

Basic platform services	Active end users	Active professional users
Virtual Assistants	Number of unique end users who have interacted in some way with the virtual assistant at least once during the month, for example by activating it, asking a question, accessing a service through a command or controlling a home automation device.	Number of unique developers who, during the year, have offered at least one virtual assistant computer application or functionality to make an existing computer application accessible through the virtual assistant.
Web browsers	Number of unique end users who have interacted with the web browser at least once during the month, for example by entering a query or a website address into the web browser address bar.	Number of unique business users whose business websites (i.e. websites used in a commercial or professional capacity) were accessed via the web browser at least once during the year or which offered a plug-in, extension or add-on used in the web browser during the year.
Cloud computing services	Number of unique end users who have interacted with any cloud computing service of the relevant provider at least once during the month, in exchange for any type of remuneration, regardless of whether such remuneration is paid in the same month or not.	Number of unique business users who have delivered any cloud computing service hosted on the cloud infrastructure of the provider in question during the year.
Online advertising services	For the sale of own advertising spaces: Number of unique end users exposed to an advertising impression at least once during the month. For advertising intermediation services (including advertising networks, advertising exchanges and any other advertising intermediation services): Number of unique end users exposed at least once during the month to an advertising impression that triggered the advertising brokerage service.	For the sale of own advertising spaces: Number of unique advertisers that served at least one ad impression during the year. For advertising intermediation services (including advertising networks, advertising exchanges and any other advertising intermediation services): Number of unique business users (including advertisers, publishers, or other intermediaries) who have interacted through or been served ads by the advertising intermediation service during the year.