



**2020/0374(COD)**

1.6.2021

**\*\*\*I**

## **DRAFT REPORT**

on the proposal for a regulation of the European Parliament and of the Council  
Contestable and fair markets in the digital sector (Digital Markets Act)  
(COM(2020)0842 – C9-0419/2020 – 2020/0374(COD))

Committee on the Internal Market and Consumer Protection

Rapporteur: Andreas Schwab

Rapporteurs for the opinion (\*):  
Stéphanie Yon-Courtin, Committee on Economic and Monetary Affairs  
Carlos Zorrinho, Committee on Industry, Research and Energy

(\*) Associated committees – Rule 57 of the Rules of Procedure

### ***Symbols for procedures***

- \* Consultation procedure
- \*\*\* Consent procedure
- \*\*\*I Ordinary legislative procedure (first reading)
- \*\*\*II Ordinary legislative procedure (second reading)
- \*\*\*III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

### ***Amendments to a draft act***

#### **Amendments by Parliament set out in two columns**

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

#### **Amendments by Parliament in the form of a consolidated text**

New text is highlighted in ***bold italics***. Deletions are indicated using either the **■** symbol or ~~strikeout~~. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a regulation of the European Parliament and of the Council  
Contestable and fair markets in the digital sector (Digital Markets Act)  
(COM(2020)0842 – C9-0419/2020 – 2020/0374(COD))**

**(Ordinary legislative procedure: first reading)**

*The European Parliament,*

- having regard to the Commission proposal to Parliament and the Council (COM(2020)0842),
  - having regard to Article 294(2) and Article 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C9-0419/2020),
  - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
  - having regard to the opinion of the European Economic and Social Committee of XXX,
  - having regard to the opinion of the Committee of the Regions of XXX,
  - having regard to Rule 59 of its Rules of Procedure,
  - having regard to the opinions of the Committee on Economic and Monetary Affairs, the Committee on Industry, Research and Energy, the Committee on Transport and Tourism, the Committee on Culture and Education, the Committee on Legal Affairs and the Committee on Civil Liberties, Justice and Home Affairs,
  - having regard to the report of the Committee on the Internal Market and Consumer Protection (A9-0000/2021),
1. Adopts its position at first reading hereinafter set out;
  2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
  3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

### **Amendment 1**

**Proposal for a regulation  
Recital 21**

*Text proposed by the Commission*

(21) An entrenched and durable position in its operations or the foreseeability of achieving such a position future occurs notably where the contestability of the position of the provider of the core platform service is limited. This is likely to be the case where that provider has provided a core platform service in at least three Member States to a very high number of business users and end users during at least three years.

*Amendment*

(21) An entrenched and durable position in its operations or the foreseeability of achieving such a position future occurs notably where the contestability of the position of the provider of the core platform service is limited. This is likely to be the case where that provider has provided a core platform service in at least three Member States to a very high number of business users and end users during at least three years. ***A list of indicators to be used by the providers of core platforms services when measuring active monthly end users and active yearly business users should be provided in an Annex to this Regulation.***

Or. en

## **Amendment 2**

### **Proposal for a regulation**

#### **Recital 22**

*Text proposed by the Commission*

(22) Such thresholds can be impacted by market and technical developments. The Commission should therefore be empowered to adopt delegated acts to specify the methodology for determining whether the quantitative thresholds are met, and to regularly adjust it to market and technological developments where necessary. This is particularly relevant in relation to the threshold referring to market capitalisation, which should be indexed in appropriate intervals.

*Amendment*

(22) Such thresholds can be impacted by market and technical developments. The Commission should therefore be empowered to adopt delegated acts to specify the methodology for determining whether the quantitative thresholds are met ***and update the list of indicators set out in the Annex to this Regulation,*** and to regularly adjust it to market and technological developments where necessary. This is particularly relevant in relation to the threshold referring to market capitalisation, which should be indexed in appropriate intervals.

Or. en

### Amendment 3

#### Proposal for a regulation Recital 23

##### *Text proposed by the Commission*

(23) Providers of core platform services ***which meet*** the quantitative thresholds ***but are able to present sufficiently substantiated arguments to demonstrate that, in*** the circumstances in which the relevant core platform service operates, they do not fulfil the objective requirements ***for*** a gatekeeper, ***should not be designated directly, but only subject to a further investigation.*** The burden of adducing evidence that the presumption deriving from the fulfilment of quantitative thresholds should not apply to a specific provider should be borne by that provider ***In its assessment, the Commission should take into account only the elements which directly relate to the requirements for constituting a gatekeeper, namely whether it is an important gateway which is operated by a provider with a significant impact in the internal market with an entrenched and durable position, either actual or foreseeable. Any justification on economic grounds seeking to demonstrate efficiencies deriving from a specific type of behaviour by the provider of core platform services should be discarded, as it is not relevant to the designation as a gatekeeper.*** The Commission should be able to take a decision by relying on the quantitative thresholds where the provider significantly obstructs the investigation by failing to comply with the investigative measures taken by the Commission.

##### *Amendment*

(23) Providers of core platform services ***should be able to demonstrate that, despite meeting*** the quantitative thresholds, ***due to the exceptional*** circumstances in which the relevant core platform service operates, they do not fulfil the objective requirements ***to qualify as*** a gatekeeper. ***only if they are able to present sufficiently compelling evidence to demonstrate this.*** The burden of adducing ***compelling*** evidence that the presumption deriving from the fulfilment of quantitative thresholds should not apply to a specific provider should be borne by that provider. The Commission should be able to take a decision by relying on the quantitative thresholds ***and facts available*** where the provider significantly obstructs the investigation by failing to comply with the investigative measures taken by the Commission.

Or. en

## Amendment 4

### Proposal for a regulation Recital 30

#### *Text proposed by the Commission*

(30) The very rapidly changing and complex technological nature of core platform services requires a regular review of the status of gatekeepers, including those that are foreseen to enjoy a durable and entrenched position in their operations in the near future. To provide all of the market participants, including the gatekeepers, with the required certainty as to the applicable legal obligations, a time limit for such regular reviews is necessary. It is also important to conduct such reviews on a regular basis and at least every **two** years.

#### *Amendment*

(30) The very rapidly changing and complex technological nature of core platform services requires a regular review of the status of gatekeepers, including those that are foreseen to enjoy a durable and entrenched position in their operations in the near future. To provide all of the market participants, including the gatekeepers, with the required certainty as to the applicable legal obligations, a time limit for such regular reviews is necessary. It is also important to conduct such reviews on a regular basis and at least every **three** years.

Or. en

## Amendment 5

### Proposal for a regulation Recital 31

#### *Text proposed by the Commission*

(31) To ensure the effectiveness of the review of gatekeeper status as well as the possibility to adjust the list of core platform services provided by a gatekeeper, the gatekeepers should inform the Commission of all of their intended and concluded acquisitions of other providers of core platform services or any other services provided within the digital sector. Such information should not only serve the review process mentioned above, regarding the status of individual gatekeepers, but will also provide information that is crucial to monitoring broader contestability trends in the digital sector and can therefore be a useful factor for consideration in the

#### *Amendment*

(31) To ensure the effectiveness of the review of gatekeeper status as well as the possibility to adjust the list of core platform services provided by a gatekeeper, the gatekeepers should inform the Commission **and other competent national authorities** of all of their intended and concluded acquisitions of other providers of core platform services or any other services provided within the digital sector. Such information should not only serve the review process mentioned above, regarding the status of individual gatekeepers, but will also provide information that is crucial to monitoring broader contestability trends in the digital



context of the market investigations foreseen by this Regulation.

sector and can therefore be a useful factor for consideration in the context of the market investigations foreseen by this Regulation.

Or. en

## Amendment 6

### Proposal for a regulation

#### Recital 32

##### *Text proposed by the Commission*

(32) To safeguard the fairness and contestability of core platform services provided by gatekeepers, it is necessary to provide in a clear and unambiguous manner for a set of harmonised obligations with regard to those services. Such rules are needed to address the risk of harmful effects of unfair practices imposed by gatekeepers, to the benefit of the business environment in the services concerned, to the benefit of users and ultimately to the benefit of society as a whole. Given the fast-moving and dynamic nature of digital markets, and the substantial economic power of gatekeepers, it is important that these obligations are effectively applied without being circumvented. To that end, the obligations in question should apply to any *practices* by a gatekeeper, irrespective of its form and irrespective of whether it is of a contractual, commercial, technical or any other nature, insofar as *a practice corresponds to the type of practice that is the subject of one of the obligations of* this Regulation.

##### *Amendment*

(32) To safeguard the fairness and contestability of core platform services provided by gatekeepers, it is necessary to provide in a clear and unambiguous manner for a set of harmonised obligations with regard to those services. Such rules are needed to address the risk of harmful effects of unfair practices imposed by gatekeepers, to the benefit of the business environment in the services concerned, to the benefit of users and ultimately to the benefit of society as a whole. Given the fast-moving and dynamic nature of digital markets, and the substantial economic power of gatekeepers, it is important that these obligations are effectively applied without being circumvented. To that end, the obligations in question should apply to any *behaviour* by a gatekeeper, irrespective of its form and irrespective of whether it is of a contractual, commercial, technical or any other nature, insofar as *such behaviour may, in practice, have an equivalent object or effect to the practices that are prohibited under* this Regulation.

Or. en

## Amendment 7

### Proposal for a regulation Recital 33

#### *Text proposed by the Commission*

(33) The obligations laid down in this Regulation are limited to what is necessary and justified to address the unfairness of the identified practices by gatekeepers and to ensure contestability in relation to core platform services provided by gatekeepers. Therefore, the obligations should correspond to those practices that are considered unfair by taking into account the features of the digital sector and where experience gained, for example in the enforcement of the EU competition rules, shows that they have a particularly negative direct impact on the business users and end users. In addition, it is necessary to provide for the possibility of a regulatory dialogue with gatekeepers to tailor those obligations that are likely to require specific implementing measures in order to ensure their effectiveness and proportionality. The obligations should only be updated after a thorough investigation on the nature and impact of specific practices that may be newly identified, ***following an in-depth investigation***, as unfair or limiting contestability in the same manner as the unfair practices laid down in this Regulation while potentially escaping the scope of the current set of obligations.

#### *Amendment*

(33) The obligations laid down in this Regulation are limited to what is necessary and justified to address the unfairness of the identified practices by gatekeepers and to ensure contestability in relation to core platform services provided by gatekeepers. Therefore, the obligations should correspond to those practices that are considered unfair by taking into account the features of the digital sector and where experience gained, for example in the enforcement of the EU competition rules, shows that they have a particularly negative direct impact on the business users and end users. In addition, it is necessary to provide for the possibility of a regulatory dialogue with gatekeepers to tailor those obligations that are likely to require specific implementing measures in order to ensure their effectiveness and proportionality. The obligations should only be updated after a thorough investigation on the nature and impact of specific practices that may be newly identified as unfair or limiting contestability in the same manner as the unfair practices laid down in this Regulation while potentially escaping the scope of the current set of obligations.

Or. en

## Amendment 8

### Proposal for a regulation Recital 36

*Text proposed by the Commission*

(36) The conduct of combining end user data from different sources or signing in users to different services of gatekeepers gives them potential advantages in terms of accumulation of data, thereby raising barriers to entry. To ensure that gatekeepers do not unfairly undermine the contestability of core platform services, they should enable their end users to freely choose to opt-in to such business practices by offering a less personalised alternative. The possibility should cover all possible sources of personal data, including own services of the gatekeeper as well as third party websites, and should be proactively presented to the end user in an explicit, clear and straightforward manner.

*Amendment*

(36) The conduct of combining end user data from different sources or signing in users to different services of gatekeepers gives them potential advantages in terms of accumulation of data, thereby raising barriers to entry. To ensure that gatekeepers do not unfairly undermine the contestability of core platform services, they should enable their end users to freely choose to opt-in to such business practices by offering a less personalised **but equivalent** alternative. The possibility should cover all possible sources of personal data, including own services of the gatekeeper as well as third party websites, and should be proactively presented to the end user in an explicit, clear and straightforward manner.

Or. en

**Amendment 9**

**Proposal for a regulation**

**Recital 37**

*Text proposed by the Commission*

(37) Because of their position, gatekeepers might in certain cases restrict the ability of business users of their online intermediation services to offer their goods or services to end users under more favourable conditions, including price, through other online intermediation services. Such restrictions have a significant deterrent effect on the business users of gatekeepers in terms of their use of alternative online intermediation services, limiting inter-platform contestability, which in turn limits choice of alternative online intermediation channels for end users. To ensure that business users of online intermediation services of

*Amendment*

(37) Because of their position, gatekeepers might, in certain cases, **through the imposition of contractual terms and conditions**, restrict the ability of business users of their online intermediation services to offer their goods or services to end users under more favourable conditions, including price, through other online intermediation services. Such restrictions have a significant deterrent effect on the business users of gatekeepers in terms of their use of alternative online intermediation services, limiting inter-platform contestability, which in turn limits choice of alternative online intermediation channels for end

gatekeepers can freely choose alternative online intermediation services and differentiate the conditions under which they offer their products or services to their end users, it should not be accepted that gatekeepers limit business users from choosing to differentiate commercial conditions, including price. Such a restriction should apply to any measure with equivalent effect, such as for example increased commission rates or de-listing of the offers of business users.

users. To ensure that business users of online intermediation services of gatekeepers can freely choose alternative online intermediation services and differentiate the conditions under which they offer their products or services to their end users, it should not be accepted that gatekeepers limit business users from choosing to differentiate commercial conditions, including price. Such a restriction should apply to any measure with equivalent effect, such as for example increased commission rates or de-listing of the offers of business users.

Or. en

## Amendment 10

### Proposal for a regulation

#### Recital 38

##### *Text proposed by the Commission*

(38) To prevent further reinforcing their dependence on the core platform services of gatekeepers, the business users of these gatekeepers should be free in promoting and choosing the distribution channel they consider most appropriate to interact with any end users that these business users have already acquired through core platform services provided by the gatekeeper. Conversely, end users should also be free to choose offers of such business users and to enter into contracts with them either through core platform services of the gatekeeper, if applicable, or from a direct distribution channel of the business user or another indirect distribution channel such business user may use. This should apply to the promotion of offers and conclusion of contracts between business users and end users. Moreover, the ability of end users to freely acquire content, subscriptions, features or other items outside the core

##### *Amendment*

(38) To prevent further reinforcing their dependence on the core platform services of gatekeepers, the business users of these gatekeepers should be free in promoting and choosing the distribution channel they consider most appropriate to interact with any end users that these business users have already acquired through core platform services provided by the gatekeeper, ***and for which the core platform service has been remunerated.*** Conversely, end users should also be free to choose offers of such business users and to enter into contracts with them either through core platform services of the gatekeeper, if applicable, or from a direct distribution channel of the business user or another indirect distribution channel such business user may use. This should apply to the promotion of offers and conclusion of contracts between business users and end users. Moreover, the ability of end users to freely acquire content,

platform services of the gatekeeper should not be undermined or restricted. In particular, it should be avoided that gatekeepers restrict end users from access to and use of such services via a software application running on their core platform service. For example, subscribers to online content purchased outside a software application download or purchased from a software application store should not be prevented from accessing such online content on a software application on the gatekeeper's core platform service simply because it was purchased outside such software application or software application store.

subscriptions, features or other items outside the core platform services of the gatekeeper should not be undermined or restricted. In particular, it should be avoided that gatekeepers restrict end users from access to and use of such services via a software application running on their core platform service. For example, subscribers to online content purchased outside a software application download or purchased from a software application store should not be prevented from accessing such online content on a software application on the gatekeeper's core platform service simply because it was purchased outside such software application or software application store.

Or. en

## Amendment 11

### Proposal for a regulation

#### Recital 39

##### *Text proposed by the Commission*

(39) To safeguard a fair commercial environment and protect the contestability of the digital sector it is important to safeguard the right of business users to raise concerns about unfair behaviour by gatekeepers with any relevant administrative or other public authorities. For example, business users may want to complain about different types of unfair practices, such as discriminatory access conditions, unjustified closing of business user accounts or unclear grounds for product de-listings. Any practice that would in any way inhibit such a possibility of raising concerns or seeking available redress, for instance by means of confidentiality clauses in agreements or other written terms, should therefore be prohibited. This should be without prejudice to the right of business users and

##### *Amendment*

(39) To safeguard a fair commercial environment and protect the contestability of the digital sector it is important to safeguard the right of business users to raise concerns about unfair behaviour by gatekeepers with any relevant administrative or other public authorities, ***including national courts***. For example, business users may want to complain about different types of unfair practices, such as discriminatory access conditions, unjustified closing of business user accounts or unclear grounds for product de-listings. Any practice that would in any way inhibit such a possibility of raising concerns or seeking available redress, for instance by means of confidentiality clauses in agreements or other written terms, should therefore be prohibited. This should be without prejudice to the right of

gatekeepers to lay down in their agreements the terms of use including the use of lawful complaints-handling mechanisms, including any use of alternative dispute resolution mechanisms or of the jurisdiction of specific courts in compliance with respective Union and national law This should therefore also be without prejudice to the role gatekeepers play in the fight against illegal content online.

business users and gatekeepers to lay down in their agreements the terms of use including the use of lawful complaints-handling mechanisms, including any use of alternative dispute resolution mechanisms or of the jurisdiction of specific courts in compliance with respective Union and national law This should therefore also be without prejudice to the role gatekeepers play in the fight against illegal content online.

Or. en

## **Amendment 12**

### **Proposal for a regulation**

#### **Recital 42**

##### *Text proposed by the Commission*

(42) 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 sheer complexity of modern day programmatic advertising. The sector is considered to have become more non-transparent after the introduction of new privacy legislation, and is expected to become even more opaque with the announced removal of third-party cookies. This often leads to a lack of information and knowledge for advertisers and publishers about the conditions of the advertising services they purchased and undermines their ability to switch to alternative providers of online advertising services. Furthermore, the costs of online advertising are likely to be higher than they would be in a fairer, more transparent and contestable platform environment. These higher costs are likely to be reflected in the prices that end users pay for many daily products and services

##### *Amendment*

(42) 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 sheer complexity of modern day programmatic advertising. The sector is considered to have become more non-transparent after the introduction of new privacy legislation, and is expected to become even more opaque with the announced removal of third-party cookies. This often leads to a lack of information and knowledge for advertisers and publishers about the conditions of the advertising services they purchased and undermines their ability to switch to alternative providers of online advertising services. Furthermore, the costs of online advertising are likely to be higher than they would be in a fairer, more transparent and contestable platform environment. These higher costs are likely to be reflected in the prices that end users pay for many daily products and services

relying on the use of online advertising. Transparency obligations should therefore require gatekeepers to provide advertisers and publishers to whom they supply online advertising services, ***when requested and to the extent possible, with*** information that allows both sides to understand the price paid for each of the different advertising services provided as part of the relevant advertising value chain.

relying on the use of online advertising. Transparency obligations should therefore require gatekeepers to provide advertisers and publishers to whom they supply online advertising services, ***with free of charge, effective, high-quality, continuous and real-time*** information that allows both sides to understand the price paid for each of the different advertising services provided as part of the relevant advertising value chain ***and the availability and visibility of advertisement.***

Or. en

### **Amendment 13**

#### **Proposal for a regulation Recital 46**

##### *Text proposed by the Commission*

(46) A gatekeeper may use different means to favour its own services or products on its core platform service, to the detriment of the same or similar services that end users could obtain through third parties. This may for instance be the case where certain software applications or services are pre-installed by a gatekeeper. To enable end user choice, gatekeepers should not prevent end users from un-installing any pre-installed software applications on its ***core platform service*** and thereby favour their own software applications.

##### *Amendment*

(46) A gatekeeper may use different means to favour its own services or products on its core platform service, to the detriment of the same or similar services that end users could obtain through third parties. This may for instance be the case where certain software applications or services are pre-installed by a gatekeeper. To enable end user choice, gatekeepers should not prevent end users from un-installing any pre-installed software applications on its ***operating system*** and thereby favour their own software applications.

Or. en

### **Amendment 14**

#### **Proposal for a regulation Recital 48**

*Text proposed by the Commission*

(48) 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 which they exercise control which frequently leads to conflicts of interest. This can include the situation whereby a gatekeeper offers its own online intermediation services through an online search engine. When offering those products or services on the core platform service, gatekeepers can reserve a better position to their own offering, in terms of ranking, as opposed to the products of third parties also operating on that core platform service. This can occur for instance with products or services, including other core platform services, which are ranked in the results communicated by online search engines, or which are partly or entirely embedded in online search engines results, groups of results specialised in a certain topic, displayed along with the results of an online search engine, which are considered or used by certain end users as a service distinct or additional to the online search engine. Other instances are those of software applications which are distributed through software application stores, or products or services that are given prominence and display in the newsfeed of a social network, or products or services ranked in search results or displayed on an online marketplace. In those circumstances, the gatekeeper is in a dual-role position as intermediary for third party providers and as direct provider of products or services of the gatekeeper. Consequently, these gatekeepers have the ability to undermine directly the contestability for those products or services on these core platform services, to the detriment of business users which are not controlled by the gatekeeper.

*Amendment*

(48) 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 which they exercise control which frequently leads to conflicts of interest. This can include the situation whereby a gatekeeper offers its own online intermediation services through an online search engine. When offering those products or services on the core platform service, gatekeepers can reserve a better position to their own offering, in terms of ranking, as opposed to the products of third parties also operating on that core platform service. This can occur for instance with products or services, including other core platform services, which are ranked in the results communicated by online search engines, or which are partly or entirely embedded in online search engines results, groups of results specialised in a certain topic, displayed along with the results of an online search engine, which are considered or used by certain end users as a service distinct or additional to the online search engine. Other instances are those of software applications which are distributed through software application stores, or products or services that are given prominence and display in the newsfeed of a social network, or products or services ranked in search results or displayed on an online marketplace. In those circumstances, the gatekeeper is in a dual-role position as intermediary for third party providers and as direct provider of products or services of the gatekeeper ***leading to conflicts of interest.*** Consequently, these gatekeepers have the ability to undermine directly the contestability for those products or services on these core platform services, to the detriment of business users which are not controlled by the gatekeeper.



## Amendment 15

### Proposal for a regulation

#### Recital 49

##### *Text proposed by the Commission*

(49) In such situations, the gatekeeper should not engage in any form of differentiated or preferential treatment in ranking on the core platform service, whether through legal, commercial or technical means, in favour of products or services it offers itself or through a business user which it controls. To ensure that this obligation is effective, it should also be ensured that the conditions that apply to such ranking are also generally fair. Ranking should in this context cover all forms of relative prominence, including display, rating, linking or voice results. To ensure that this obligation is effective and cannot be circumvented it should also apply to any measure that may have an equivalent effect to the differentiated 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.<sup>34</sup>

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<sup>34</sup> Commission Notice: Guidelines on ranking transparency pursuant to Regulation (EU) 2019/1150 of the European Parliament and of the Council (OJ C 424, 8.12.2020, p. 1).

##### *Amendment*

(49) In such situations, the gatekeeper should not engage in any form of differentiated or preferential treatment in ranking ***or display*** on the core platform service, whether through legal, commercial or technical means, in favour of products or services it offers itself or through a business user which it controls. To ensure that this obligation is effective, it should also be ensured that the conditions that apply to such ranking are also generally fair. Ranking should in this context cover all forms of relative prominence, including display, rating, linking or voice results. To ensure that this obligation is effective and cannot be circumvented it should also apply to any measure that may have an equivalent effect to the differentiated or preferential treatment in ranking. ***In addition, to avoid any conflicts of interest, gatekeepers should be required to treat its own product or services, as a separate commercial entity that is commercially viable as a stand-alone service.*** The guidelines adopted pursuant to Article 5 of Regulation (EU) 2019/1150 should also facilitate the implementation and enforcement of this obligation.<sup>34</sup>

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<sup>34</sup> Commission Notice: Guidelines on ranking transparency pursuant to Regulation (EU) 2019/1150 of the European Parliament and of the Council (OJ C 424, 8.12.2020, p. 1).

## Amendment 16

### Proposal for a regulation Recital 54

#### *Text proposed by the Commission*

(54) Gatekeepers benefit from access to vast amounts of data that they collect while providing the core platform services as well as other digital services. To ensure that gatekeepers do not undermine the contestability of core platform services as well as the innovation potential of the dynamic digital sector by restricting the ability of business users to effectively port their data, business users and end users should be granted effective and immediate access to the data they provided or generated in the context of their use of the relevant core platform services of the gatekeeper, in a structured, commonly used and machine-readable format. This should apply also to any other data at different levels of aggregation that may be necessary to effectively enable such portability. It should also be ensured that business users and end users can port that data in real time effectively, such as for example through high quality application programming interfaces. Facilitating switching or multi-homing should lead, in turn, to an increased choice for business users and end users and an incentive for gatekeepers and business users to innovate.

#### *Amendment*

(54) Gatekeepers benefit from access to vast amounts of data that they collect while providing the core platform services as well as other digital services. To ensure that gatekeepers do not undermine the contestability of core platform services as well as the innovation potential of the dynamic digital sector by restricting the ability of business users to effectively port their data, business users and end users ***or third parties authorised by an end user*** should be granted effective, ***free of charge*** and immediate access to the data they provided or generated in the context of their use of the relevant core platform services of the gatekeeper, in a structured, commonly used and machine-readable format. This should apply also to any other data at different levels of aggregation that may be necessary to effectively enable such portability. It should also be ensured that business users and end users can port that data in real time effectively, such as for example through high quality application programming interfaces. Facilitating switching or multi-homing should lead, in turn, to an increased choice for business users and end users and an incentive for gatekeepers and business users to innovate.

Or. en

## Amendment 17

### Proposal for a regulation Recital 55

*Text proposed by the Commission*

(55) Business users that use large core platform services provided by gatekeepers and end users of such business users provide and generate a vast amount of data, including data inferred from such use. In order to ensure that business users have access to the relevant data thus generated, the gatekeeper should, upon their request, allow unhindered access, free of charge, to such data. Such access should also be given to third parties contracted by the business user, who are acting as processors of this data for the business user. Data provided or generated by the same business users and the same end users of these business users in the context of other services provided by the same gatekeeper may be concerned where this is inextricably linked to the relevant request. To this end, a gatekeeper should not use any contractual or other restrictions to prevent business users from accessing relevant data and should enable business users to obtain consent of their end users for such data access and retrieval, where such consent is required under Regulation (EU) 2016/679 and Directive 2002/58/EC. Gatekeepers should also facilitate access to these data in real time by means of appropriate technical measures, such as for example putting in place high quality application programming interfaces.

*Amendment*

(55) Business users that use large core platform services provided by gatekeepers and end users of such business users provide and generate a vast amount of data, including data inferred from such use. In order to ensure that business users have access to the relevant data thus generated, the gatekeeper should, upon their request, allow unhindered access, free of charge, to such data. Such access should also be given to third parties contracted by the business user, who are acting as processors of this data for the business user. Data provided or generated by the same business users and the same end users of these business users in the context of other services provided by the same gatekeeper may be concerned where this is inextricably linked to the relevant request. To this end, a gatekeeper should not use any contractual or other restrictions to prevent business users from accessing relevant data and should enable business users to obtain consent of their end users for such data access and retrieval, where such consent is required under Regulation (EU) 2016/679 and Directive 2002/58/EC. Gatekeepers should also facilitate access to these data in real time by means of appropriate technical measures, such as for example putting in place high quality application programming interfaces ***or enabling access to data by the business user “in situ”, without a transfer by the gatekeeper.***

Or. en

**Amendment 18**

**Proposal for a regulation  
Recital 57**

(57) ***In particular*** gatekeepers which provide access to ***software application stores*** serve as an important gateway for business users that seek to reach end users. In view of the imbalance in bargaining power between those gatekeepers and business users of their ***software application stores***, those gatekeepers should not be allowed to impose general conditions, including pricing conditions, that would be unfair or lead to unjustified differentiation. Pricing or other general access conditions should be considered unfair if they lead to an imbalance of rights and obligations imposed on business users or confer an advantage on the gatekeeper which is disproportionate to the service provided by the gatekeeper to business users or lead to a disadvantage for business users in providing the same or similar services as the gatekeeper. The following benchmarks can serve as a yardstick to determine the fairness of general access conditions: prices charged or conditions imposed for the same or similar services by other providers of ***software application stores***; prices charged or conditions imposed by the provider of ***the software application store*** for different related or similar services or to different types of end users; prices charged or conditions imposed by the provider of ***the software application store*** for the same service in different geographic regions; prices charged or conditions imposed by the provider of ***the software application store*** for the same service the gatekeeper offers to itself. This obligation should not establish an access right and it should be without prejudice to the ability of providers of ***software application stores*** to take the required responsibility in the fight against illegal and unwanted content as set out in Regulation [Digital Services Act].

(57) Gatekeepers which provide access to ***core platform services*** serve as an important gateway for business users that seek to reach end users. In view of the imbalance in bargaining power between those gatekeepers and business users of their ***core platform services***, those gatekeepers should not be allowed to impose general conditions, including pricing conditions, that would be unfair or lead to unjustified differentiation. Pricing or other general access conditions should be considered unfair if they lead to an imbalance of rights and obligations imposed on business users or confer an advantage on the gatekeeper which is disproportionate to the service provided by the gatekeeper to business users or lead to a disadvantage for business users in providing the same or similar services as the gatekeeper. The following benchmarks can serve as a yardstick to determine the fairness of general access conditions: prices charged or conditions imposed for the same or similar services by other providers of ***core platform services***; prices charged or conditions imposed by the provider of ***core platform services*** for different related or similar services or to different types of end users; prices charged or conditions imposed by the provider of ***core platform services*** for the same service in different geographic regions; prices charged or conditions imposed by the provider of ***core platform services*** for the same service the gatekeeper offers to itself. This obligation should not establish an access right and it should be without prejudice to the ability of providers of ***core platform services*** to take the required responsibility in the fight against illegal and unwanted content as set out in Regulation [Digital Services Act].

Or. en

## Amendment 19

### Proposal for a regulation Recital 58

#### *Text proposed by the Commission*

(58) To ensure the effectiveness of the obligations laid down by this Regulation, while also making certain that these obligations are limited to what is necessary to ensure contestability and tackling the harmful effects of the unfair behaviour by gatekeepers, it is important to clearly define and circumscribe them so as to allow the gatekeeper to immediately comply with them, in full respect of Regulation (EU) 2016/679 and Directive 2002/58/EC, consumer protection, cyber security and product safety. The gatekeepers should ensure the compliance with this Regulation by design. The necessary measures should therefore be as much as possible and where relevant integrated into the technological design used by the gatekeepers. However, it may in certain cases be appropriate for the Commission, following a dialogue with the gatekeeper concerned, to further specify some of the measures that the gatekeeper concerned should adopt in order to effectively comply with those obligations that are susceptible of being further specified. This possibility of a regulatory dialogue should facilitate compliance by gatekeepers and expedite the correct implementation of the Regulation.

#### *Amendment*

(58) To ensure the effectiveness of the obligations laid down by this Regulation, while also making certain that these obligations are limited to what is necessary to ensure contestability and tackling the harmful effects of the unfair behaviour by gatekeepers, it is important to clearly define and circumscribe them so as to allow the gatekeeper to immediately comply with them, in full respect of Regulation (EU) 2016/679 and Directive 2002/58/EC, consumer protection, cyber security and product safety. The gatekeepers should ensure the compliance with this Regulation by design. The necessary measures should therefore be as much as possible and where relevant integrated into the technological design used by the gatekeepers. However, it may in certain cases be appropriate for the Commission, following a dialogue with the gatekeeper concerned, ***and, where appropriate, after consulting interested third parties,*** to further specify ***in a decision*** some of the measures that the gatekeeper concerned should adopt in order to effectively comply with those obligations that are susceptible of being further specified. This possibility of a regulatory dialogue should facilitate compliance by gatekeepers and expedite the correct implementation of the Regulation.

Or. en

## Amendment 20

### Proposal for a regulation Recital 60

#### *Text proposed by the Commission*

(60) In exceptional circumstances justified on the limited grounds of public morality, public health or public security, the Commission should be able to decide that the obligation concerned does not apply to a specific core platform service. Affecting these public interests can indicate that the cost to society as a whole of enforcing a certain obligation would in a certain exceptional case be too high and thus disproportionate. The regulatory dialogue to facilitate compliance with limited suspension and exemption possibilities should ensure the proportionality of the obligations in this Regulation without undermining the intended ex ante effects on fairness and contestability.

#### *Amendment*

(60) In exceptional circumstances justified on the limited grounds of public morality, public health or public security, the Commission should be able to decide that the obligation concerned does not apply to a specific core platform service. Affecting these public interests can indicate that the cost to society as a whole of enforcing a certain obligation would in a certain exceptional case be too high and thus disproportionate. The regulatory dialogue to facilitate compliance with limited suspension and exemption possibilities should ensure the proportionality of the obligations in this Regulation without undermining the intended ex ante effects on fairness and contestability. ***Where such an exemption is granted, the Commission should review its decision every two years.***

Or. en

## Amendment 21

### Proposal for a regulation Recital 62

#### *Text proposed by the Commission*

(62) In order to ensure the full and lasting achievement of the objectives of this Regulation, the Commission should be able to assess whether a provider of core platform services should be designated as a gatekeeper without meeting the quantitative thresholds laid down in this Regulation; whether systematic non-compliance by a gatekeeper warrants imposing additional remedies; and whether

#### *Amendment*

(62) In order to ensure the full and lasting achievement of the objectives of this Regulation, the Commission should be able to assess whether a provider of core platform services should be designated as a gatekeeper without meeting the quantitative thresholds laid down in this Regulation; whether systematic non-compliance by a gatekeeper warrants imposing additional remedies; and whether

the list of obligations addressing unfair practices by gatekeepers should be reviewed **and** additional practices that are similarly unfair and limiting the contestability of digital markets should be identified. Such assessment should be based on market investigations to be run in an appropriate timeframe, by using clear procedures and deadlines, in order to support the ex ante effect of this Regulation on contestability and fairness in the digital sector, and to provide the requisite degree of legal certainty.

the list of obligations addressing unfair practices by gatekeepers should be reviewed; **and whether** additional practices that are similarly unfair and limiting the contestability of digital markets should be identified. Such assessment should be based on market investigations to be run in an appropriate timeframe, by using clear procedures and deadlines, in order to support the ex ante effect of this Regulation on contestability and fairness in the digital sector, and to provide the requisite degree of legal certainty.

Or. en

## Amendment 22

### Proposal for a regulation Recital 64

#### *Text proposed by the Commission*

(64) The Commission should investigate and assess whether additional behavioural, or, where appropriate, structural remedies are justified, in order to ensure that the gatekeeper cannot frustrate the objectives of this Regulation by **systematic non-compliance** with one or several of the obligations laid down in this Regulation, **which has further strengthened its gatekeeper position. This would be the case if the gatekeeper's size in the internal market has further increased, economic dependency of business users and end users on the gatekeeper's core platform services has further strengthened as their number has further increased and the gatekeeper benefits from increased entrenchment of its position.** The Commission should therefore in such cases have the power to impose any remedy, whether behavioural or structural, **having due regard to the principle of proportionality. Structural remedies, such as legal, functional or structural**

#### *Amendment*

(64) The Commission should investigate and assess whether additional behavioural, or, where appropriate, structural remedies are justified, in order to ensure that the gatekeeper cannot frustrate the objectives of this Regulation by **systematically not complying** with one or several of the obligations laid down in this Regulation. The Commission should therefore in such cases **of systematic non-compliance** have the power to impose any remedy, whether behavioural or structural, **that is necessary to ensure effective compliance with this Regulation.**

*separation, including the divestiture of a business, or parts of it, should only be imposed either where there is no equally effective behavioural remedy or where any equally effective behavioural remedy would be more burdensome for the undertaking concerned than the structural remedy. Changes to the structure of an undertaking as it existed before the systematic non-compliance was established would only be proportionate where there is a substantial risk that this systematic non-compliance results from the very structure of the undertaking concerned.*

Or. en

## Amendment 23

### Proposal for a regulation Recital 65

#### *Text proposed by the Commission*

(65) The services and practices in core platform services and markets in which these intervene can change quickly and to a significant extent. To ensure that this Regulation remains up to date and constitutes an effective and holistic regulatory response to the problems posed by gatekeepers, it is important to provide for a regular review of the lists of core platform services ***as well as of the obligations provided for in this Regulation. This is particularly important to ensure that behaviour that may limit the contestability of core platform services or is unfair is identified.*** While it is important to conduct a review on a regular basis, given the dynamically changing nature of the digital sector, in order to ensure legal certainty as to the regulatory conditions, any reviews should be conducted within a reasonable and appropriate time-frame. Market

#### *Amendment*

(65) The services and practices in core platform services and markets in which these intervene can change quickly and to a significant extent. ***For example, it is possible that the Commission will soon need to assess whether new services such as voice-enabled services, need to be added to the list of core platform services.*** To ensure that this Regulation remains up to date and constitutes an effective and holistic regulatory response to the problems posed by gatekeepers, it is important to provide for a regular review of the lists of core platform services. While it is important to conduct a review on a regular basis, given the dynamically changing nature of the digital sector, in order to ensure legal certainty as to the regulatory conditions, any reviews should be conducted within a reasonable and appropriate time-frame. Market investigations should also ensure that the



investigations should also ensure that the Commission has a solid evidentiary basis on which it can assess whether it should propose to amend this Regulation in order to expand, or further detail, the lists of core platform services. They should equally ensure that the Commission has a solid evidentiary basis on which it can assess whether it should propose to amend the obligations laid down in this Regulation or whether it should adopt a delegated act updating such obligations.

Commission has a solid evidentiary basis on which it can assess whether it should propose to amend this Regulation in order to expand, or further detail, the lists of core platform services. They should equally ensure that the Commission has a solid evidentiary basis on which it can assess whether it should propose to amend the obligations laid down in this Regulation or whether it should adopt a delegated act updating such obligations.

Or. en

## **Amendment 24**

### **Proposal for a regulation Recital 67**

*Text proposed by the Commission*

*Amendment*

***(67) Where, in the course of a proceeding into non-compliance or an investigation into systemic non-compliance, a gatekeeper offers commitments to the Commission, the latter should be able to adopt a decision making these commitments binding on the gatekeeper concerned, where it finds that the commitments ensure effective compliance with the obligations of this Regulation. This decision should also find that there are no longer grounds for action by the Commission.***

***deleted***

Or. en

## **Amendment 25**

### **Proposal for a regulation Recital 75 a (new)**

*Text proposed by the Commission*

*Amendment*

***(75a) In order to facilitate cooperation and coordination between the Commission and Member States in their enforcement actions, a group of regulators with responsibilities in the digital sector should be established with the power to advise the Commission on a number of decisions Establishing that group of regulators should enable the exchange of information and best practices among the Members States, better monitoring and thus strengthen the implementation of this Regulation.***

Or. en

## **Amendment 26**

### **Proposal for a regulation Recital 76**

*Text proposed by the Commission*

*Amendment*

(76) In order to ensure uniform conditions for the implementation of Articles 3, 6, 12, 13, 15, 16, 17, 20, 22, 23, 25 and 30, implementing powers should be conferred on the Commission. Those powers should be *exercised* in accordance with Regulation (EU) No 182//2011 of the European Parliament and of the Council<sup>1</sup>.

(76) In order to ensure uniform conditions for the implementation of Articles 3, **5**, 6, 12, 13, 15, 16, 17, 20, 22, 23, 25 and 30, implementing powers should be conferred on the Commission. Those powers should be *exercised* in accordance with Regulation (EU) No 182//2011 of the European Parliament and of the Council<sup>1</sup>.

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<sup>1</sup> Regulation (EU) No 182/2011 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).

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<sup>1</sup> Regulation (EU) No 182/2011 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).

Or. en

## Amendment 27

### Proposal for a regulation Recital 77

#### *Text proposed by the Commission*

(77) The advisory committee established in accordance with Regulation (EU) No 182//2011 should also deliver opinions on certain individual decisions of the Commission issued under this Regulation. In order to ensure contestable and fair markets in the digital sector across the Union where gatekeepers are present, the power to adopt acts in accordance with Article 290 of the Treaty should be delegated to the Commission to supplement this Regulation. In particular, delegated acts should be adopted in respect of the methodology for determining the quantitative thresholds for designation of gatekeepers under this Regulation ***and in respect of the update of the obligations laid down in this Regulation where, based on a market investigation the Commission has identified the need for updating the obligations addressing practices that limit the contestability of core platform services or are unfair.*** It is of particular importance that the Commission carries out appropriate consultations and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016<sup>36</sup>. 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.

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<sup>36</sup> Interinstitutional Agreement between the

#### *Amendment*

(77) The advisory committee established in accordance with Regulation (EU) No 182//2011 should also deliver opinions on certain individual decisions of the Commission issued under this Regulation. In order to ensure contestable and fair markets in the digital sector across the Union where gatekeepers are present, the power to adopt acts in accordance with Article 290 of the Treaty should be delegated to the Commission to supplement this Regulation. In particular, delegated acts should be adopted in respect of the methodology for determining the quantitative thresholds for designation of gatekeepers under this Regulation. It is of particular importance that the Commission carries out appropriate consultations and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016<sup>36</sup>. 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.

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<sup>36</sup> Interinstitutional Agreement between the

European Parliament, the Council of the European Union and the European Commission on Better Law-Making (OJ L 123, 12.5.2016, p.1).

European Parliament, the Council of the European Union and the European Commission on Better Law-Making (OJ L 123, 12.5.2016, p.1).

Or. en

## Amendment 28

### Proposal for a regulation Recital 77 a (new)

*Text proposed by the Commission*

*Amendment*

***(77a) National courts will have an important role in applying this Regulation and should be allowed to ask the Commission to send them information or opinions on questions concerning the application of this Regulation. At the same time, the Commission should be able to submit oral or written observations to courts of the Member States.***

Or. en

## Amendment 29

### Proposal for a regulation Article 1 – paragraph 1

*Text proposed by the Commission*

*Amendment*

1. This Regulation ***lays*** down harmonised rules ensuring contestable and fair markets in the digital sector across the Union where gatekeepers are present.

1. ***The purpose of*** this Regulation ***is to contribute to the proper functioning of the internal market by laying*** down harmonised rules ensuring contestable and fair markets in the digital sector across the Union where gatekeepers are present.

Or. en

## Amendment 30

### Proposal for a regulation Article 1 – paragraph 5

*Text proposed by the Commission*

5. Member States shall not impose on gatekeepers further obligations by way of laws, regulations or administrative action for the purpose of ensuring contestable and fair markets. This is without prejudice to rules pursuing other legitimate public interests, in compliance with Union law. In particular, nothing in this Regulation precludes Member States from imposing obligations, which are compatible with Union law, on undertakings, including providers of core platform services where these obligations are unrelated to the relevant undertakings having a status of gatekeeper within the meaning of this Regulation in order to protect consumers or to fight against acts of unfair competition.

*Amendment*

5. ***In order to avoid the fragmentation of the internal market,*** Member States shall not impose on gatekeepers further obligations by way of laws, regulations or administrative action for the purpose of ensuring contestable and fair markets. This is without prejudice to rules pursuing other legitimate public interests, in compliance with Union law. In particular, nothing in this Regulation precludes Member States from imposing obligations, which are compatible with Union law, on undertakings, including providers of core platform services where these obligations are unrelated to the relevant undertakings having a status of gatekeeper within the meaning of this Regulation in order to protect consumers or to fight against acts of unfair competition.

Or. en

## Amendment 31

### Proposal for a regulation Article 1 – paragraph 6

*Text proposed by the Commission*

6. This Regulation is without prejudice to the application of Articles 101 and 102 TFEU. It is also without prejudice to the application of: national rules prohibiting anticompetitive agreements, decisions by associations of undertakings, concerted practices and abuses of dominant positions; national competition rules prohibiting other forms of unilateral conduct ***insofar as they are applied to undertakings other than gatekeepers or***

*Amendment*

6. This Regulation is without prejudice to the application of Articles 101 and 102 TFEU. It is also without prejudice to the application of: national rules prohibiting anticompetitive agreements, decisions by associations of undertakings, concerted practices and abuses of dominant positions; national competition rules prohibiting other forms of unilateral conduct; Council Regulation (EC) No 139/2004<sup>38</sup> and national rules concerning

**amount to imposing additional obligations on gatekeepers**; Council Regulation (EC) No 139/2004<sup>38</sup> and national rules concerning merger control; Regulation (EU) 2019/1150 and Regulation (EU) .../.. of the European Parliament and of the Council<sup>39</sup> .

merger control; Regulation (EU) 2019/1150 and Regulation (EU) .../.. of the European Parliament and of the Council<sup>39</sup> .

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<sup>38</sup> Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) (OJ L 24, 29.1.2004, p. 1).

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<sup>38</sup> Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) (OJ L 24, 29.1.2004, p. 1).

<sup>39</sup> Regulation (EU) .../.. of the European Parliament and of the Council – proposal on a Single Market For Digital Services (Digital Services Act) and amending Directive 2000/31/EC.

<sup>39</sup> Regulation (EU) .../.. of the European Parliament and of the Council – proposal on a Single Market For Digital Services (Digital Services Act) and amending Directive 2000/31/EC.

Or. en

## Amendment 32

### Proposal for a regulation Article 1 – paragraph 7

#### *Text proposed by the Commission*

7. National authorities shall not take decisions which would run counter to a decision adopted by the Commission under this Regulation. The Commission and Member States shall work in close cooperation and coordination in their enforcement actions.

#### *Amendment*

7. National authorities, **including national courts**, shall not take decisions which would run counter to a decision adopted by the Commission under this Regulation. The Commission and Member States shall work in close cooperation and coordination in their enforcement actions.

Or. en

## Amendment 33

### Proposal for a regulation Article 2 – paragraph 1 – point 2 – point e

*Text proposed by the Commission*

(e) number-independent interpersonal communication services;

*Amendment*

(e) number-independent interpersonal communication services ***provided by any other core platform services***;

Or. en

#### **Amendment 34**

##### **Proposal for a regulation**

##### **Article 2 – paragraph 1 – point 2 – point g**

*Text proposed by the Commission*

(g) cloud computing services;

*Amendment*

(g) cloud computing services ***provided by any other core platform services***;

Or. en

#### **Amendment 35**

##### **Proposal for a regulation**

##### **Article 2 – paragraph 1 – point 2 – point h**

*Text proposed by the Commission*

(h) advertising services, including any advertising networks, advertising exchanges and any other advertising intermediation services, provided by a provider of any of the core platform services listed in points (a) to (g);

*Amendment*

(h) ***online*** advertising services, including any advertising networks, advertising exchanges and any other advertising intermediation services, provided by a provider of any of the core platform services listed in points (a) to (g);

Or. en

#### **Amendment 36**

##### **Proposal for a regulation**

##### **Article 2 – paragraph 1 – point 14**

*Text proposed by the Commission*

(14) ‘Ancillary service’ means services provided in the context of or together with core platform services, including payment services as defined in point 3 of Article 4 and technical services which support the provision of payment services as defined in Article 3(j) of Directive (EU) 2015/2366, **fulfilment**, identification or advertising services;

*Amendment*

(14) ‘Ancillary service’ means services provided in the context of or together with core platform services, including payment services as defined in point 3 of Article 4 and technical services which support the provision of payment services as defined in Article 3(j) of Directive (EU) 2015/2366, identification or advertising services;

Or. en

**Amendment 37**

**Proposal for a regulation**

**Article 3 – paragraph 2 – point a**

*Text proposed by the Commission*

(a) the requirement in paragraph 1 point (a) where the undertaking to which it belongs achieves an annual EEA turnover equal to or above EUR **6.5** billion in the last three financial years, or where the average market capitalisation or the equivalent fair market value of the undertaking to which it belongs amounted to at least EUR **65** billion in the last financial year, and it provides a core platform service in at least three Member States;

*Amendment*

(a) the requirement in paragraph 1 point (a) where the undertaking to which it belongs achieves an annual EEA turnover equal to or above EUR **10** billion in the last three financial years, or where the average market capitalisation or the equivalent fair market value of the undertaking to which it belongs amounted to at least EUR **100** billion in the last financial year, and it provides a core platform service in at least three Member States;

Or. en

*Justification*

*The DMA should be clearly targeted to those platforms that play an unquestionable role as gatekeepers due to their size and their impact on the internal market. To this end, it is appropriate to increase the quantitative thresholds and to add - as an additional condition for companies to be designated as gatekeepers under Article 3 (2) of the Regulation - that they are providers of not only one but, at least, two core platform services. The provision of two or more core platform services is also an important indicator of the role of these companies as providers of an ecosystem of services.*



## Amendment 38

### Proposal for a regulation

#### Article 3 – paragraph 2 – point b – subparagraph 1

*Text proposed by the Commission*

(b) the requirement in paragraph 1 point (b) where it provides **a** core platform **service that** has more than 45 million monthly active end users established or located in the Union and more than 10 000 yearly active business users established in the Union in the last financial year;

*Amendment*

(b) the requirement in paragraph 1 point (b) where it provides **two or more** core platform **services each of which** has more than 45 million monthly active end users established or located in the Union and more than 10 000 yearly active business users established in the Union in the last financial year. **Monthly active end users and yearly active business users shall be measured taking into account the indicators set out in the Annex to this Regulation.**

Or. en

*Justification*

*A list of the indicators should be added as annex to this Regulation enabling providers of core platform services to know in advance how to measure the number of monthly active end-users and yearly active business users under Article 3 (2).*

## Amendment 39

### Proposal for a regulation

#### Article 3 – paragraph 3 – subparagraph 1

*Text proposed by the Commission*

Where a provider of core platform services meets all the thresholds in paragraph 2, it shall notify the Commission thereof within **three months** after those thresholds are satisfied and provide it with the relevant information identified in paragraph 2.. That notification shall include the relevant information identified in paragraph 2 for each of the core platform services of the provider that meets the thresholds in paragraph 2 point (b). The notification

*Amendment*

Where a provider of core platform services meets all the thresholds in paragraph 2, it shall notify the Commission thereof within **one month** after those thresholds are satisfied and provide it with the relevant information identified in paragraph 2.. That notification shall include the relevant information identified in paragraph 2 for each of the core platform services of the provider that meets the thresholds in paragraph 2 point (b). The notification

shall be updated whenever other core platform services individually meet the thresholds in paragraph 2 point (b).

shall be updated whenever other core platform services individually meet the thresholds in paragraph 2 point (b).

Or. en

#### *Justification*

*The designation of a company as gatekeeper should be a fast procedure. One month seems adequate to issue a designation decision.*

### **Amendment 40**

#### **Proposal for a regulation**

#### **Article 3 – paragraph 4 – subparagraph 1**

##### *Text proposed by the Commission*

The Commission shall, without undue delay and at the latest 60 days after receiving the complete information referred to in paragraph 3, designate the provider of core platform services that meets all the thresholds of paragraph 2 as a gatekeeper, unless that provider, with its notification, presents **sufficiently** substantiated arguments to demonstrate that, in the circumstances in which the relevant core platform service operates, **and taking into account the elements listed in paragraph 6**, the provider does not satisfy the requirements of paragraph 1.

##### *Amendment*

The Commission shall, without undue delay and at the latest 60 days after receiving the complete information referred to in paragraph 3, designate the provider of core platform services that meets all the thresholds of paragraph 2 as a gatekeeper, unless that provider, with its notification, presents **compelling** substantiated arguments to demonstrate that, in the circumstances in which the relevant core platform service operates, the provider does not satisfy the requirements of paragraph 1.

Or. en

### **Amendment 41**

#### **Proposal for a regulation**

#### **Article 3 – paragraph 4 – subparagraph 2**

##### *Text proposed by the Commission*

**Where the gatekeeper presents such sufficiently substantiated arguments to demonstrate that it does not satisfy the**

##### *Amendment*

**deleted**

*requirements of paragraph 1, the Commission shall apply paragraph 6 to assess whether the criteria in paragraph 1 are met.*

Or. en

*Justification*

*Where the designation is based on the quantitative and objective criteria of Article 3 (2), companies designated as gatekeepers should only be able to challenge the designation where compelling evidence exists to demonstrate that they do not satisfy the requirements of paragraph 1. The thorough analysis under Article 3 (6) should not be required (nor would be justified) where companies meet the quantitative presumptions of Article 3 (2).*

**Amendment 42**

**Proposal for a regulation  
Article 3 – paragraph 4 a (new)**

*Text proposed by the Commission*

*Amendment*

***4a. Where the provider of the core platform service fails to provide within the deadline set by the Commission all the relevant information that is required to assess its designation as gatekeeper pursuant to Article 3 (2), the Commission shall be entitled to designate that provider as a gatekeeper based on the facts available.***

Or. en

*Justification*

*If companies do not cooperate with the provision of information to the Commission, the Commission should be able to designate a company as a gatekeeper based on the facts available.*

**Amendment 43**

**Proposal for a regulation  
Article 3 – paragraph 5**

*Text proposed by the Commission*

5. The Commission is empowered to adopt delegated acts in accordance with Article 37 to specify the methodology for determining whether the quantitative thresholds laid down in paragraph 2 are met, and to regularly adjust it to market and technological developments where necessary, in particular as regards the threshold in paragraph 2, point (a).

*Amendment*

5. The Commission is empowered to adopt delegated acts in accordance with Article 37 to specify the methodology for determining whether the quantitative thresholds laid down in paragraph 2 are met, ***to update the list of indicators set out in the Annex to this Regulation*** and to regularly adjust that methodology and those lists to market and technological developments where necessary, in particular as regards the threshold in paragraph 2, point (a).

Or. en

*Justification*

*The Commission should be empowered to update the list of indicators set out in the Annex taking into account market and technological developments.*

**Amendment 44**

**Proposal for a regulation**

**Article 3 – paragraph 6 – subparagraph 1**

*Text proposed by the Commission*

The Commission may identify as a gatekeeper, in accordance with the procedure laid down in Article 15, any provider of core platform services that meets each of the requirements of paragraph 1, but does not satisfy each of the thresholds of paragraph 2, ***or has presented sufficiently substantiated arguments in accordance with paragraph 4.***

*Amendment*

The Commission may identify as a gatekeeper, in accordance with the procedure laid down in Article 15, any provider of core platform services that meets each of the requirements of paragraph 1, but does not satisfy each of the thresholds of paragraph 2.

Or. en

*Justification*

*Justification: The thorough analysis under Article 3 (6) should not be required (nor would be justified) where companies meet the quantitative presumptions of Article 3 (2).*

## Amendment 45

### Proposal for a regulation

#### Article 3 – paragraph 6 – subparagraph 2 – point e a (new)

*Text proposed by the Commission*

*Amendment*

***(ea) the degree of multi-homing among business and end users;***

Or. en

*Justification*

*The degree of multi-homing is an important indicator to assess gatekeeper status that should be explicitly added in Article 3 (6).*

## Amendment 46

### Proposal for a regulation

#### Article 3 – paragraph 6 – subparagraph 4

*Text proposed by the Commission*

*Amendment*

***Where the provider of a core platform service that satisfies the quantitative thresholds of paragraph 2 fails to comply with the investigative measures ordered by the Commission in a significant manner and the failure persists after the provider has been invited to comply within a reasonable time-limit and to submit observations, the Commission shall be entitled to designate that provider as a gatekeeper.*** ***deleted***

Or. en

## Amendment 47

### Proposal for a regulation

#### Article 3 – paragraph 6 – subparagraph 5

*Text proposed by the Commission*

*Amendment*

***Where the provider of a core platform service that does not satisfy the quantitative thresholds of paragraph 2 fails to comply with the investigative measures ordered by the Commission in a significant manner and the failure persists after the provider has been invited to comply within a reasonable time-limit and to submit observations, the Commission shall be entitled to designate that provider as a gatekeeper based on facts available.***

***deleted***

Or. en

*Justification*

*Replaced by the new wording under Article 3 (4a)*

#### **Amendment 48**

##### **Proposal for a regulation Article 3 – paragraph 8**

*Text proposed by the Commission*

*Amendment*

8. The gatekeeper shall comply with the obligations laid down in Articles 5 and 6 within **six** months after a core platform service has been included in the list pursuant to paragraph 7 of this Article.

8. The gatekeeper shall comply with the obligations laid down in Articles 5 and 6 within **four** months after a core platform service has been included in the list pursuant to paragraph 7 of this Article.

Or. en

#### **Amendment 49**

##### **Proposal for a regulation Article 4 – paragraph 2 – subparagraph 1**

*Text proposed by the Commission*

*Amendment*

The Commission shall regularly, and at least every **2** years, review whether the

The Commission shall regularly, and at least every **three** years, review whether the

designated gatekeepers continue to satisfy the requirements laid down in Article 3(1), or whether new providers of core platform services satisfy those requirements. The regular review shall also examine whether the list of affected core platform services of the gatekeeper needs to be adjusted.

designated gatekeepers continue to satisfy the requirements laid down in Article 3(1), or whether new providers of core platform services satisfy those requirements. The regular review shall also examine whether the list of affected core platform services of the gatekeeper needs to be adjusted.

Or. en

## Amendment 50

### Proposal for a regulation Article 4 – paragraph 3

#### *Text proposed by the Commission*

3. The Commission shall publish and update the list of gatekeepers and the list of the core platform services for which they need to comply with the obligations laid down in Articles 5 and 6 on an on-going basis.

#### *Amendment*

3. The Commission shall publish and update the list of gatekeepers and the list of the core platform services for which they need to comply with the obligations laid down in Articles 5 and 6, on an on-going basis **and at least every two years**.

Or. en

## Amendment 51

### Proposal for a regulation Article 5 – paragraph 1 – point a

#### *Text proposed by the Commission*

(a) refrain from combining personal data sourced from these core platform services with personal data from any other services offered by the gatekeeper or with personal data from third-party services, and from signing in end users to other services of the gatekeeper in order to combine personal data, unless the end user has been presented with the specific choice and provided consent in the sense of Regulation (EU) 2016/679. ;

#### *Amendment*

(a) refrain from combining personal data sourced from these core platform services with personal data from any other services offered by the gatekeeper or with personal data from third-party services, and from signing in end users to other services of the gatekeeper in order to combine personal data, unless the end user has been presented with the specific choice and provided consent in the sense of **Article 6(1), point (a)**, of Regulation (EU) 2016/679; **alternatively, the gatekeeper**

*may rely on the legal basis included under Article 6(1) of that Regulation with the exception of points (b) and (f) thereof.*

Or. en

*Justification*

*This obligation aims at preventing gatekeepers from misusing the GDPR in the context of combining personal data sourced from core platform services with personal data from any other services offered by the gatekeeper.*

**Amendment 52**

**Proposal for a regulation  
Article 5 – paragraph 1 – point b**

*Text proposed by the Commission*

(b) *allow* business users *to offer* the same products or services to end users through third party online intermediation services at prices or conditions that are different from those offered through the online intermediation services of the gatekeeper;

*Amendment*

(b) *refrain from applying contractual obligations that prevent* business users *from offering* the same products or services to end users through third party online intermediation services at prices or conditions that are different from those offered through the online intermediation services of the gatekeeper;

Or. en

*Justification*

*This obligation aims at prohibiting gatekeepers to constrain the ability of end-users to engage in multi-homing; it prohibits gatekeepers from applying contractual obligations that prevent business users from offering their good/services at different price/conditions (e.g. better prices) through other platforms (so-called Most-Favoured Nation (MFN) clauses);*

**Amendment 53**

**Proposal for a regulation  
Article 5 – paragraph 1 – point c**

*Text proposed by the Commission*

(c) allow business users to promote offers to end users acquired via the core

*Amendment*

(c) allow business users to promote *different* offers to end users acquired via



platform service, and to conclude contracts with these end users *regardless of whether for that purpose they use* the core platform services of the gatekeeper *or not, and allow end users to access and use, through the core platform services of the gatekeeper, content, subscriptions, features or other items by using the software application of a business user, where these items have been acquired by the end users from the relevant business user without using the core platform services of the gatekeeper;*

the core platform service *and for which the core platform service has been remunerated or through other channels,* and to conclude contracts with these end users *outside* the core platform services of the gatekeeper.

Or. en

#### *Justification*

*This obligation aims at prohibiting gatekeepers from constraining the ability of business users to promote their own services to reach out end users and offer them services outside the core platform service; The second part of the provision is moved to a different point.*

## **Amendment 54**

### **Proposal for a regulation**

#### **Article 5 – paragraph 1 – point c a (new)**

*Text proposed by the Commission*

*Amendment*

*(ca) allow end users to access and use, through the core platform services of the gatekeeper, content, subscriptions, features or other items by using the software application of a business user, even where these items have been acquired by the end users from the relevant business user without using the core platform services of the gatekeeper;*

Or. en

#### *Justification*

*This obligation aims at prohibiting gatekeepers to constrain the ability of end-users to engage in multi-homing by imposing on gatekeepers the obligation to allow end users to access alternative services through the core platform service; moved from the previous point.*

## Amendment 55

### Proposal for a regulation

#### Article 5 – paragraph 1 – point d

*Text proposed by the Commission*

(d) refrain from preventing or restricting business users from raising issues with any relevant public authority relating to any practice of gatekeepers;

*Amendment*

(d) refrain from preventing or restricting business users from raising issues with any relevant public authority, ***including national courts***, relating to any practice of gatekeepers;

Or. en

## Amendment 56

### Proposal for a regulation

#### Article 5 – paragraph 1 – point g

*Text proposed by the Commission*

(g) provide advertisers and publishers to which it supplies advertising services, ***upon their request***, with information concerning the price paid by the advertiser and publisher, as well as the amount ***or*** remuneration paid to the publisher, for the publishing of a given ad and for each of the relevant advertising services provided by the gatekeeper.

*Amendment*

(g) provide ***individual*** advertisers and publishers to which it supplies advertising services, with ***free of charge, high-quality, effective, continuous and real-time access to information on the visibility and availability of advertisement portfolio as well as pricing conditions concerning the bids placed by advertisers and advertising intermediaries***, the price paid by the advertiser and publisher, as well as the amount ***and*** remuneration paid to the publisher, for the publishing of a given ad and for each of the relevant advertising services provided by the gatekeeper.

Or. en

*Justification*

*Changes aimed at improve transparency of the online advertisement market.*

## Amendment 57

### Proposal for a regulation

#### Article 5 – paragraph 1 – point g a (new)

*Text proposed by the Commission*

*Amendment*

***(ga) refrain from using, in competition with business users, any data not publicly available, which is generated through activities by those business users, including by the end users of these business users, of its core platform services or provided by those business users of its core platform services or by the end users of these business users;***

Or. en

*Justification*

*Moved from Article 6 as this obligation does not seem susceptible of being further specified.*

## Amendment 58

### Proposal for a regulation

#### Article 5 – paragraph 1 – point g b (new)

*Text proposed by the Commission*

*Amendment*

***(gb) allow end users to uninstall any pre-installed software applications on its operating system without prejudice to the possibility for a gatekeeper to restrict such un-installation in relation to software applications that are essential for the functioning of the operating system or of the device and which cannot technically be offered on a stand-alone basis by third-parties;***

Or. en

*Justification*

*Moved from Article 6 as this obligation does not seem susceptible of being further specified.*

## Amendment 59

### Proposal for a regulation

#### Article 6 – paragraph 1 – point a

*Text proposed by the Commission*

*Amendment*

**(a) refrain from using, in competition with business users, any data not publicly available, which is generated through activities by those business users, including by the end users of these business users, of its core platform services or provided by those business users of its core platform services or by the end users of these business users;** **deleted**

Or. en

*Justification*

*Moved to Article 5 as this obligation does not seem susceptible of being further specified.*

## Amendment 60

### Proposal for a regulation

#### Article 6 – paragraph 1 – point b

*Text proposed by the Commission*

*Amendment*

**(b) allow end users to un-install any pre-installed software applications on its core platform service without prejudice to the possibility for a gatekeeper to restrict such un-installation in relation to software applications that are essential for the functioning of the operating system or of the device and which cannot technically be offered on a standalone basis by third-parties;** **deleted**

Or. en

*Justification*

*Moved to Article 5 as this obligation does not seem susceptible of being further specified.*

## Amendment 61

### Proposal for a regulation

#### Article 6 – paragraph 1 – point c

*Text proposed by the Commission*

(c) allow the installation and effective use of third party software applications or software application stores using, or interoperating with, operating systems of that gatekeeper and allow these software applications or software application stores to be accessed by means other than the core platform services of that gatekeeper. The gatekeeper shall not be prevented from taking proportionate *measures* to ensure that third party software applications or software application stores do not endanger the integrity of the hardware or operating system provided by the gatekeeper;

*Amendment*

(c) allow the installation and effective use of third party software applications or software application stores using, or interoperating with, operating systems of that gatekeeper and allow these software applications or software application stores to be accessed by means other than the core platform services of that gatekeeper. The gatekeeper shall not be prevented from taking *measures that are both necessary and* proportionate to ensure that third party software applications or software application stores do not endanger the integrity of the hardware or operating system provided by the gatekeeper;

Or. en

## Amendment 62

### Proposal for a regulation

#### Article 6 – paragraph 1 – point d

*Text proposed by the Commission*

(d) refrain from treating more favourably in ranking services and products offered by the gatekeeper itself or by any third party belonging to the same undertaking compared to similar services or products of third party and apply fair and non-discriminatory conditions to such ranking;

*Amendment*

(d) refrain from treating more favourably in ranking *or display* services and products offered by the gatekeeper itself or by any third party belonging to the same undertaking compared to similar services or products of third party and apply fair and non-discriminatory conditions to such ranking; *where a gatekeeper's online search engine results page includes the display of separate products or services, third parties shall be afforded equal opportunity to provide this product or services in exchange for remuneration; to avoid any conflicts of interest, the gatekeeper's product or*

***service shall be treated as a separate commercial entity and shall be commercially viable as a stand-alone service;***

Or. en

*Justification*

*This obligation aims at prohibiting self-preferencing where conflicts of interest exist in online search market (where gatekeeper competes with third parties in the offer of good or services);*

**Amendment 63**

**Proposal for a regulation**

**Article 6 – paragraph 1 – point h**

*Text proposed by the Commission*

(h) provide effective portability of data generated through ***the activity of a business user or end user and shall, in particular, provide*** tools for end users to facilitate the exercise of data portability, in line with Regulation EU 2016/679, including by the provision of continuous and real-time access ;

*Amendment*

(h) provide ***end users or third parties authorised by an end user, free of charge, with*** effective portability of data ***provided by the end user or*** generated through ***his or her*** activity ***in the context of their use on the relevant core platform service, including by providing*** tools for end users to facilitate the ***effective*** exercise of ***such*** data portability, in line with Regulation EU 2016/679, ***and*** including by the provision of continuous and real-time access;

Or. en

*Justification*

*This provision aims at promoting contestability by ensuring that there is effective data portability. Access by business users is covered under Article 6 (1) (i).*

**Amendment 64**

**Proposal for a regulation**

**Article 6 – paragraph 1 – point i**

*Text proposed by the Commission*

(i) provide business users, or third

*Amendment*

(i) provide business users, or third

parties authorised by a business user, free of charge, with *effective, high-quality*, continuous and real-time access and use of aggregated or non-aggregated data, that is provided for or generated in the context of the use of the relevant core platform services by those business users and the end users engaging with the products or services provided by those business users; for personal data, provide access and use only where directly connected with the use effectuated by the end user in respect of the products or services offered by the relevant business user through the relevant core platform service, and when the end user opts in to such sharing with a consent in the sense of the Regulation (EU) 2016/679;

parties authorised by a business user, free of charge, with continuous and real-time access and use of aggregated or non-aggregated data, that is provided for or generated in the context of the use of the relevant core platform services by those business users and the end users engaging with the products or services provided by those business users; ***this shall include at the request of the business user, the possibility and necessary tools to access and analyse data “in-situ” without a transfer from the gatekeeper.*** For personal data, provide access and use only where directly connected with the use effectuated by the end user in respect of the products or services offered by the relevant business user through the relevant core platform service, and when the end user opts in to such sharing with a consent in the sense of the Regulation (EU) 2016/679;

Or. en

#### *Justification*

*This provision aims at promoting fairness and contestability by allowing business users to access and use key data relevant for improving their offers and relations with their customers, which are otherwise exclusively absorbed by the gatekeeper.*

### **Amendment 65**

#### **Proposal for a regulation**

#### **Article 6 – paragraph 1 – point k**

##### *Text proposed by the Commission*

(k) apply fair and non-discriminatory general conditions of access for business users to its ***software application store*** designated pursuant to Article 3 of this Regulation.

##### *Amendment*

(k) apply fair and non-discriminatory general conditions of access ***or conditions that are not less favourable than the conditions applied to its own services*** for business users to its ***core platform services*** designated pursuant to Article 3 of this Regulation.

Or. en

## *Justification*

*This provision aims at promoting contestability by obliging the gatekeeper to provide its core platform services under FRAND terms and at least at conditions that are not less favourable than the conditions that it applied to its own core platform services.*

### **Amendment 66**

#### **Proposal for a regulation Article 7 – paragraph 1**

##### *Text proposed by the Commission*

1. The measures implemented by the gatekeeper to ensure compliance with the obligations laid down in Articles 5 and 6 shall be effective in achieving the objective of the relevant obligation. The gatekeeper shall ensure that these measures are implemented in compliance with Regulation (EU) 2016/679 and Directive 2002/58/EC, and with legislation on cyber security, consumer protection and product safety.

##### *Amendment*

1. ***It shall be the responsibility of the gatekeeper to ensure and demonstrate compliance with the obligations laid down in Articles 5 and 6 by design.*** The measures implemented by the gatekeeper to ensure compliance with the obligations laid down in Articles 5 and 6 shall be effective in achieving the objective of the relevant obligation. The gatekeeper shall ensure that these measures are implemented in compliance with Regulation (EU) 2016/679 and Directive 2002/58/EC, and with legislation on cyber security, consumer protection and product safety.

Or. en

### **Amendment 67**

#### **Proposal for a regulation Article 7 – paragraph 2**

##### *Text proposed by the Commission*

2. Where the Commission finds that the measures that the gatekeeper intends to implement pursuant to paragraph 1, or has implemented, do not ensure effective compliance with the relevant obligations laid down in Article 6, it may by decision specify the measures that the gatekeeper concerned shall implement. The

##### *Amendment*

2. Where the Commission finds that the measures that the gatekeeper intends to implement pursuant to paragraph 1, or has implemented, do not ensure effective compliance with the relevant obligations laid down in Article 6, it may by decision specify the measures that the gatekeeper concerned shall implement. The



Commission shall adopt such a decision within *six* months from the opening of proceedings pursuant to Article 18.

Commission shall adopt such a decision within *four* months from the opening of proceedings pursuant to Article 18.

Or. en

## Amendment 68

### Proposal for a regulation Article 7 – paragraph 3 a (new)

*Text proposed by the Commission*

*Amendment*

**3a. Where the Commission intends to adopt a specification decision pursuant to paragraph 2, it shall publish a concise summary of the measures the gatekeeper is expected to implement to ensure effective compliance with the obligations of this Regulation. The Commission may decide to invite interested third parties to submit their observations within a time limit, which is fixed by the Commission in its publication. Publication shall have regard to the legitimate interest of undertakings in the protection of their business secrets.**

Or. en

## Amendment 69

### Proposal for a regulation Article 7 – paragraph 4

*Text proposed by the Commission*

*Amendment*

4. In view of adopting the decision under paragraph 2, the Commission shall communicate its preliminary findings within *three* months from the opening of the proceedings. In the preliminary findings, the Commission shall explain the measures it considers to take or it considers that the provider of core platform services

4. In view of adopting the decision under paragraph 2, the Commission shall communicate its preliminary findings within *two* months from the opening of the proceedings. In the preliminary findings, the Commission shall explain the measures it considers to take or it considers that the provider of core platform services

concerned should take in order to effectively address the preliminary findings.

concerned should take in order to effectively address the preliminary findings.

Or. en

## Amendment 70

### Proposal for a regulation Article 7 – paragraph 7

#### *Text proposed by the Commission*

7. A gatekeeper may request the opening of proceedings pursuant to Article 18 for the Commission to determine whether the measures that the gatekeeper intends to implement or has implemented under Article 6 are effective in achieving the objective of the relevant obligation in the specific circumstances. ***A gatekeeper may, with*** its request, provide a reasoned submission to explain in particular why the measures that it intends to implement or has implemented are effective in achieving the objective of the relevant obligation in the specific circumstances.

#### *Amendment*

7. A gatekeeper may request the opening of proceedings pursuant to Article 18 for the Commission to determine whether the measures that the gatekeeper intends to implement or has implemented under Article 6 are effective in achieving the objective of the relevant obligation in the specific circumstances. ***In*** its request, ***the gatekeeper shall*** provide a reasoned submission to explain in particular why the measures that it intends to implement or has implemented are effective in achieving the objective of the relevant obligation in the specific circumstances.

Or. en

#### *Justification*

*The possibility of market testing the measures the gatekeeper is expected to implement to ensure effective compliance with the obligations of this Regulation should be foreseen.*

## Amendment 71

### Proposal for a regulation Article 8 – paragraph 2

#### *Text proposed by the Commission*

2. Where the suspension is granted pursuant to paragraph 1, the Commission shall review its suspension decision every

#### *Amendment*

2. Where the suspension is granted pursuant to paragraph 1, the Commission shall review its suspension decision every

year. Following such a review the Commission shall either lift the suspension or decide that the conditions of paragraph 1 continue to be met.

year. Following such a review the Commission shall either *wholly or partly* lift the suspension or decide that the conditions of paragraph 1 continue to be met.

Or. en

## **Amendment 72**

### **Proposal for a regulation Article 8 – paragraph 3 – subparagraph 1**

#### *Text proposed by the Commission*

The Commission may, acting on a reasoned request by a gatekeeper, provisionally suspend the application of the relevant obligation to one or more individual core platform services already prior to the decision pursuant to paragraph 1.

#### *Amendment*

*In cases of urgency*, the Commission may, acting on a reasoned request by a gatekeeper, provisionally suspend the application of the relevant obligation to one or more individual core platform services already prior to the decision pursuant to paragraph 1.

Or. en

## **Amendment 73**

### **Proposal for a regulation Article 9 – title**

#### *Text proposed by the Commission*

Exemption *for overriding reasons* of public *interest*

#### *Amendment*

Exemption *on grounds* of public *morality, public health or public security*

Or. en

## **Amendment 74**

### **Proposal for a regulation Article 9 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1a. Where the exemption is granted pursuant to paragraph 1, the Commission shall review its exemption decision every two years. Following such a review the Commission shall lift either wholly or partially the exemption or decide that the conditions of paragraph 1 continue to be met.***

Or. en

## **Amendment 75**

### **Proposal for a regulation Article 9 – paragraph 3 – subparagraph 1**

*Text proposed by the Commission*

The Commission may, acting on a reasoned request by a gatekeeper or on its own initiative, provisionally suspend the application of the relevant obligation to one or more individual core platform services already prior to the decision pursuant to paragraph 1.

*Amendment*

***In cases of urgency,*** the Commission may, acting on a reasoned request by a gatekeeper or on its own initiative, provisionally suspend the application of the relevant obligation to one or more individual core platform services already prior to the decision pursuant to paragraph 1.

Or. en

## **Amendment 76**

### **Proposal for a regulation Article 11**

*Text proposed by the Commission*

#### **Article 11**

##### **Anti-circumvention**

1. A gatekeeper shall ensure that the obligations of Articles 5 and 6 are fully and effectively complied with. While the

*Amendment*

#### **Article 6a (new)**

##### **Anti-circumvention**

1. A gatekeeper shall ensure that the obligations of Articles 5 and 6 are fully and effectively complied with. While the

obligations of Articles 5 and 6 apply in respect of core platform services designated pursuant to Article 3, ***their implementation shall not be undermined by*** any behaviour ***of the*** undertaking to which the gatekeeper belongs, regardless of whether this behaviour is of a contractual, commercial, technical or any other nature.

2. Where consent for collecting and processing of personal data is required to ensure compliance with this Regulation, a gatekeeper shall take the necessary steps to either enable business users to directly obtain the required consent to their processing, where required under Regulation (EU) 2016/679 and 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 duly anonymised data where appropriate. ***The gatekeeper shall not make the obtaining of this consent by the business user more burdensome than for its own services.***

3. ***A gatekeeper shall not degrade the conditions or quality of any of the core platform services provided to business users or end users who avail themselves of the rights or choices laid down in Articles 5 and 6, or make the exercise of those rights or choices unduly difficult.***

obligations of Articles 5 and 6 apply in respect of core platform services designated pursuant to Article 3, ***a gatekeeper, including any*** undertaking to which the gatekeeper belongs, ***shall not engage in*** any behaviour regardless of whether this behaviour is of a contractual, commercial, technical or any other nature ***which, while formally, conceptually or technically distinct to a behaviour prohibited pursuant to Articles 5 and 6, is able in practice to have an equivalent object or effect.***

2. Where consent for collecting and processing of personal data is required to ensure compliance with this Regulation, a gatekeeper shall take the necessary steps to either enable business users to directly obtain the required consent to their processing, where required under Regulation (EU) 2016/679 and 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 duly anonymised data where appropriate.

Or. en

#### *Justification*

*The provision is moved after Article 6 as newArticle 6 a*

## Amendment 77

### Proposal for a regulation

#### Article 12 – paragraph 1 – subparagraph 1

##### *Text proposed by the Commission*

A gatekeeper shall inform the Commission of any intended concentration within the meaning of Article 3 of Regulation (EC) No 139/2004 involving another provider of core platform services or of any other services provided in the digital sector irrespective of whether it is notifiable to a Union competition authority under Regulation (EC) No 139/2004 or to a competent national competition authority under national merger rules.

##### *Amendment*

A gatekeeper shall inform the Commission **and the competent national authorities** of any intended concentration within the meaning of Article 3 of Regulation (EC) No 139/2004 involving another provider of core platform services or of any other services provided in the digital sector irrespective of whether it is notifiable to a Union competition authority under Regulation (EC) No 139/2004 or to a competent national competition authority under national merger rules.

Or. en

##### *Justification*

*Member States should also be informed about concentrations involving gatekeepers and providers of other core platform services in case they wish to refer the assessment of those mergers to the Commission.*

## Amendment 78

### Proposal for a regulation

#### Article 14 – paragraph 3 a (new)

##### *Text proposed by the Commission*

##### *Amendment*

**3a. The Commission may also ask one or more competent national authority to support its market investigation.**

Or. en

## Amendment 79

### Proposal for a regulation

#### Article 15 – paragraph 2

*Text proposed by the Commission*

2. In the course of a market investigation pursuant to paragraph 1, the Commission shall endeavour to communicate its preliminary findings to the provider of core platform services concerned within **six** months from the opening of the investigation. In the preliminary findings, the Commission shall explain whether it considers, on a provisional basis, that the provider of core platform services should be designated as a gatekeeper pursuant to Article 3(6).

*Amendment*

2. In the course of a market investigation pursuant to paragraph 1, the Commission shall endeavour to communicate its preliminary findings to the provider of core platform services concerned within **three** months from the opening of the investigation. In the preliminary findings, the Commission shall explain whether it considers, on a provisional basis, that the provider of core platform services should be designated as a gatekeeper pursuant to Article 3(6).

Or. en

**Amendment 80**

**Proposal for a regulation  
Article 15 – paragraph 3**

*Text proposed by the Commission*

***3. Where the provider of core platform services satisfies the thresholds set out in Article 3(2), but has presented significantly substantiated arguments in accordance with Article 3(4), the Commission shall endeavour to conclude the market investigation within five months from the opening of the market investigation by a decision pursuant to paragraph 1. In that case the Commission shall endeavour to communicate its preliminary findings pursuant to paragraph 2 to the provider of core platform services within three months from the opening of the investigation.***

*Amendment*

***deleted***

Or. en

## Amendment 81

### Proposal for a regulation Article 16 – paragraph 1

*Text proposed by the Commission*

1. Where the market investigation shows that a gatekeeper has systematically infringed the obligations laid down in Articles 5 and 6 **and has further strengthened or extended its gatekeeper position in relation to the characteristics under Article 3(1)**, the Commission may by decision adopted in accordance with the advisory procedure referred to in Article 32(4) impose on such gatekeeper any behavioural or structural remedies which are **proportionate to the infringement committed** and necessary to ensure compliance with this Regulation. The Commission shall conclude its investigation by adopting a decision within twelve months from the opening of the market investigation.

*Amendment*

1. Where the market investigation shows that a gatekeeper has systematically infringed the obligations laid down in Articles 5 and 6, the Commission may by decision adopted in accordance with the advisory procedure referred to in Article 32(4) impose on such gatekeeper any behavioural or structural remedies which are **effective** and necessary to ensure compliance with this Regulation. The Commission shall conclude its investigation by adopting a decision within twelve months from the opening of the market investigation.

Or. en

## Amendment 82

### Proposal for a regulation Article 16 – paragraph 2

*Text proposed by the Commission*

2. **The Commission may only impose structural remedies pursuant to paragraph 1 either where there is no equally effective behavioural remedy or where any equally effective behavioural remedy would be more burdensome for the gatekeeper concerned than the structural remedy.**

*Amendment*

*deleted*

Or. en



## Amendment 83

### Proposal for a regulation Article 16 – paragraph 3

*Text proposed by the Commission*

3. A gatekeeper shall be deemed to have engaged in a systematic non-compliance with the obligations laid down in Articles 5 and 6, where the Commission has issued at least **three** non-compliance or fining decisions pursuant to Articles 25 and 26 respectively against a gatekeeper in relation to any of its core platform services within a period of five years prior to the adoption of the decision opening a market investigation in view of the possible adoption of a decision pursuant to this Article.

*Amendment*

3. A gatekeeper shall be deemed to have engaged in a systematic non-compliance with the obligations laid down in Articles 5 and 6, where the Commission has issued at least **two** non-compliance or fining decisions pursuant to Articles 25 and 26 respectively against a gatekeeper in relation to any of its core platform services within a period of five years prior to the adoption of the decision opening a market investigation in view of the possible adoption of a decision pursuant to this Article.

Or. en

## Amendment 84

### Proposal for a regulation Article 16 – paragraph 4

*Text proposed by the Commission*

***4. A gatekeeper shall be deemed to have further strengthened or extended its gatekeeper position in relation to the characteristics under Article 3(1), where its impact on the internal market has further increased, its importance as a gateway for business users to reach end users has further increased or the gatekeeper enjoys a further entrenched and durable position in its operations.***

*Amendment*

***deleted***

Or. en

## Amendment 85

### Proposal for a regulation Article 16 – paragraph 5

*Text proposed by the Commission*

5. The Commission shall communicate its objections to the gatekeeper concerned within **six** months from the opening of the investigation. In its objections, the Commission shall explain whether it preliminarily considers that the conditions of paragraph 1 are met and which remedy or remedies it preliminarily considers necessary **and proportionate**.

*Amendment*

5. The Commission shall communicate its objections to the gatekeeper concerned within **four** months from the opening of the investigation. In its objections, the Commission shall explain whether it preliminarily considers that the conditions of paragraph 1 are met and which remedy or remedies it preliminarily considers **effective and** necessary.

Or. en

## Amendment 86

### Proposal for a regulation Article 16 – paragraph 6

*Text proposed by the Commission*

6. The Commission may at any time during the market investigation extend its duration where the extension is justified on objective grounds and proportionate. The extension may apply to the deadline by which the Commission has to issue its objections, or to the deadline for adoption of the final decision. The total duration of any extension or extensions pursuant to this paragraph shall not exceed six **months. The Commission may consider commitments pursuant to Article 23 and make them binding in its decision.**

*Amendment*

6. The Commission may at any time during the market investigation extend its duration where the extension is justified on objective grounds and proportionate. The extension may apply to the deadline by which the Commission has to issue its objections, or to the deadline for adoption of the final decision. The total duration of any extension or extensions pursuant to this paragraph shall not exceed six **months**.

Or. en

## Amendment 87

### Proposal for a regulation Article 17 – paragraph 1

*Text proposed by the Commission*

The Commission may conduct a market investigation with the purpose of examining whether one or more services within the digital sector should be added to the list of core platform services ***or to detect types of practices that may limit the contestability of core platform services or may be unfair and which are not effectively addressed by this Regulation.*** It shall issue a public report at the latest within **24** months from the opening of the market investigation.

*Amendment*

The Commission may conduct a market investigation with the purpose of examining whether one or more services within the digital sector should be added to the list of core platform services. It shall issue a public report at the latest within **18** months from the opening of the market investigation.

Or. en

## Amendment 88

### Proposal for a regulation Article 19 – paragraph 2

*Text proposed by the Commission*

2. The Commission may request information from undertakings and associations of undertakings pursuant to paragraph 1 also prior to opening a market investigation pursuant to Article 14 ***or proceedings pursuant to Article 18.***

*Amendment*

2. The Commission may request information from undertakings and associations of undertakings pursuant to paragraph 1 also prior to opening a market investigation pursuant to Article 14.

Or. en

## Amendment 89

### Proposal for a regulation Article 19 – paragraph 4

*Text proposed by the Commission*

4. Where the Commission requires undertakings and associations of undertakings to supply information by decision, it shall state the purpose of the request, specify what information is required and fix the time-limit within which it is to be provided. Where the Commission requires undertakings to provide access to its data-bases and algorithms, it shall state the ***legal basis and the*** purpose of the request, and fix the time-limit within which it is to be provided. It shall also indicate the penalties provided for in Article 26 and indicate or impose the periodic penalty payments provided for in Article 27. It shall further indicate the right to have the decision reviewed by the Court of Justice.

*Amendment*

4. Where the Commission requires undertakings and associations of undertakings to supply information by decision, it shall state the purpose of the request, specify what information is required and fix the time-limit within which it is to be provided. Where the Commission requires undertakings to provide access to its data-bases and algorithms, it shall state the purpose of the request, ***specify what information is required*** and fix the time-limit within which it is to be provided. It shall also indicate the penalties provided for in Article 26 and indicate or impose the periodic penalty payments provided for in Article 27. It shall further indicate the right to have the decision reviewed by the Court of Justice.

Or. en

**Amendment 90**

**Proposal for a regulation  
Article 23**

*Text proposed by the Commission*

***Article 23***

***Commitments***

***1. If during proceedings under Articles 16 or 25 the gatekeeper concerned offers commitments for the relevant core platform services to ensure compliance with the obligations laid down in Articles 5 and 6, the Commission may by decision adopted in accordance with the advisory procedure referred to in Article 32(4) make those commitments binding on that gatekeeper and declare that there are no further grounds for action.***

*Amendment*

***deleted***

**2. The Commission may, upon request or on its own initiative, reopen by decision the relevant proceedings, where:**

**(a) there has been a material change in any of the facts on which the decision was based;**

**(b) the gatekeeper concerned acts contrary to its commitments;**

**(c) the decision was based on incomplete, incorrect or misleading information provided by the parties.**

**3. Should the Commission consider that the commitments submitted by the gatekeeper concerned cannot ensure effective compliance with the obligations laid down in Articles 5 and 6, it shall explain the reasons for not making those commitments binding in the decision concluding the relevant proceedings.**

Or. en

#### *Justification*

*Commitment decisions do not seem appropriate nor justified given the ex ante self-executing nature of the Regulation.*

#### **Amendment 91**

**Proposal for a regulation  
Article 25 – paragraph 1 – point e**

*Text proposed by the Commission*

*Amendment*

**(e) commitments made legally binding pursuant to Article 23.                      deleted**

Or. en

#### **Amendment 92**

**Proposal for a regulation  
Article 26 – paragraph 1 – point a (new)**

*Text proposed by the Commission*

*Amendment*

***(aa) the obligation to notify information that is required pursuant to Article 12;***

Or. en

### **Amendment 93**

**Proposal for a regulation  
Article 26 – paragraph 1 – point a b (new)**

*Text proposed by the Commission*

*Amendment*

***(ab) the obligation to notify information that is required pursuant to Article 13 or supply incorrect, incomplete or misleading information;***

Or. en

### **Amendment 94**

**Proposal for a regulation  
Article 26 – paragraph 2 – point b**

*Text proposed by the Commission*

*Amendment*

***(b) fail to notify information that is required pursuant to Article 12 or supply incorrect, incomplete or misleading information;***

*deleted*

Or. en

*Justification*

*Moved above, under Article 26 (1).*

## Amendment 95

### Proposal for a regulation Article 26 – paragraph 2 – point c

*Text proposed by the Commission*

*Amendment*

(c) *fail to submit the description that is required pursuant to Article 13;* **deleted**

Or. en

*Justification*

*Moved above, under Article 26 (1).*

## Amendment 96

### Proposal for a regulation Article 27 – paragraph 2

*Text proposed by the Commission*

*Amendment*

2. Where the undertakings have satisfied the obligation which the periodic penalty payment was intended to enforce, the Commission may by decision adopted in accordance with the advisory procedure referred to in Article 32(4) set the definitive amount of the periodic penalty payment ***at a figure lower than that which would arise under the original decision.***

2. Where the undertakings have satisfied the obligation which the periodic penalty payment was intended to enforce, the Commission may by decision adopted in accordance with the advisory procedure referred to in Article 32(4) set the definitive amount of the periodic penalty payment.

Or. en

## Amendment 97

### Proposal for a regulation Article 28 – paragraph 1

*Text proposed by the Commission*

*Amendment*

1. The powers conferred on the Commission by Articles 26 and 27 shall be subject to a ***three*** year limitation period.

1. The powers conferred on the Commission by Articles 26 and 27 shall be subject to a ***five*** year limitation period.

## Amendment 98

### Proposal for a regulation Article 31 a (new)

*Text proposed by the Commission*

*Amendment*

#### *Article 31a*

#### ***European High-Level Group of Digital Regulators***

- 1. The Commission shall establish a European High-Level Group of Digital Regulators in the form of an Expert Group, consisting of the representatives of competent authorities of all the Member States, the Commission, relevant Union bodies and other representatives of competent authorities in specific sectors including data protection and electronic communications.***
- 2. The Group shall be composed of the head of the relevant competent authorities and shall be assisted by a secretariat provided by the Commission.***
- 3. The work of the high-level group may be organised into Expert Working Groups building cross-regulator specialist teams that provide the Commission with high level of expertise.***

Or. en

#### *Justification*

*The nature of digital services means that different regulatory regimes will inevitably interlink and overlap. For this reason, it seems appropriate to create of a High Level Group of Digital Regulators, bringing together representatives of the competent authorities of all Member States, the Commission, as well as any relevant EU bodies and other representatives of competent authorities in specific sectors.*



## **Amendment 99**

### **Proposal for a regulation Article 31 b (new)**

*Text proposed by the Commission*

*Amendment*

#### **Article 31b**

#### **Tasks of the European High-Level Group of Digital Regulators**

**1. The expert group shall have the following tasks:**

**(a) to facilitate cooperation and coordination between the Commission and Member States in their enforcement actions by promoting the exchange of information and best practices about their work and decision-making principles and practices with the aim of developing a consistent regulatory approach and avoiding conflicting decisions;**

**(b) to assist the Commission by means of advice, opinions, analysis and expertise in monitoring compliance with this Regulation;**

**(c) to make recommendations to the Commission on the need to conduct market investigations under Articles 14, 15, Article 16 and 17;**

**(d) to make recommendations to the Commission on the need to update the obligations of the Regulation under Articles 5 and 6;**

**(e) to provide advice and expertise to the Commission in the preparation of legislative proposals and policy initiatives including under Article 38;**

**(f) to provide advice and expertise to the Commission in the preparation of delegated acts;**

**(g) where necessary, to provide advice and expertise in the early preparation of implementing acts, before submission to the committee in accordance with Regulation (EU) N°182/2011;**

*(h) to maintain a publicly accessible electronic register of gatekeeper designation decisions adopted by the Commission under Article 3; and*

*(i) at the request of the Commission, to provide technical advice and expertise before the adoption of a specification decision under Article 7.*

*2. The High-Level Group of Digital Regulators shall report every two years on its activities to the European Parliament and offer recommendations and policy suggestions on how to enhance the relevance of Union policies and laws and to enable consistency in the implementation of those policies and laws at national level.*

Or. en

*Justification*

*The High Level Group should among, other things, facilitate cooperation and coordination between the Commission and Member States in their enforcement decisions, in the interest of a consistent regulatory approach and avoiding conflicting decisions.*

**Amendment 100**

**Proposal for a regulation  
Article 32 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

*1a. The Advisory Committee should be composed of representatives of the competent authorities of the Member States. For meetings in which specific issues are being discussed, Member States shall be entitled to appoint an additional representative from an authority with the relevant expertise for the issues discussed. This is without prejudice to the right of members of the Committee to be assisted by other experts from the Member States.*

Or. en

## Amendment 101

### Proposal for a regulation

#### Article 36 – paragraph 1 – introductory part

*Text proposed by the Commission*

1. The Commission may adopt implementing acts concerning: 3, 6, 12, 13, 15, 16, 17, 20, 22, 23, 25 and 30

*Amendment*

1. The Commission may adopt implementing acts concerning: 3, **5**, 6, 12, 13, 15, 16, 17, 20, 22, 23, 25 and 30

Or. en

## Amendment 102

### Proposal for a regulation

#### Article 36 – paragraph 1 – point a a (new)

*Text proposed by the Commission*

*Amendment*

***(aa) the form, content and other details on how information on price and remuneration are to be given, pursuant to Article 5(g);***

Or. en

## Amendment 103

### Proposal for a regulation

#### Article 36 – paragraph 1 – point a b (new)

*Text proposed by the Commission*

*Amendment*

***(ab) the form, content and other details on how choice is be provided and consent is to be given, pursuant to Article 5(a);***

Or. en

## Amendment 104

### Proposal for a regulation

#### Article 36 – paragraph 1 – point g a (new)

*Text proposed by the Commission*

*Amendment*

**(ga) the practical arrangements for the cooperation and coordination between the Commission and Member States provided for in Article 1(7).**

*(Technical change. Wording moved from the AM relating to Article 36(20).*

Or. en

## Amendment 105

### Proposal for a regulation

#### Article 36 – paragraph 2

*Text proposed by the Commission*

*Amendment*

2. ***the practical arrangements for the cooperation and coordination between the Commission and Member States provided for in Article 1(7).*** Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 32(4). Before the adoption of any measures pursuant to paragraph 1, the Commission shall publish a draft thereof and invite all interested parties to submit their comments within the time limit it lays down, which may not be less than one month.

2. Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 32(4). Before the adoption of any measures pursuant to paragraph 1, the Commission shall publish a draft thereof and invite all interested parties to submit their comments within the time limit it lays down, which may not be less than one month.

Or. en

*Justification*

*Technical change; wording moved above. See AM relating to Article 36(1) point (g a)(new)*

## Amendment 106

### Proposal for a regulation Article 36 a (new)

*Text proposed by the Commission*

*Amendment*

*Article 36a*

*Guidelines*

*To facilitate the compliance of gatekeepers with and the enforcement of the obligations in Articles 5, 6, 12 and 13, the Commission shall, where appropriate, issue guidelines accompanying the obligations set out in those Articles . Where appropriate and necessary, the Commission may authorise the standardisation bodies to develop standards to facilitate the implementation of the obligations.*

Or. en

## Amendment 107

### Proposal for a regulation Article 37 – paragraph 2

*Text proposed by the Commission*

*Amendment*

2. The power to adopt delegated acts referred to in Articles 3(6) and **9(1)** shall be conferred on the Commission for a period of five years from DD/MM/YYYY. 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.

2. The power to adopt delegated acts referred to in Articles 3(6) and **10** shall be conferred on the Commission for a period of five years from DD/MM/YYYY. 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.

Or. en

*Justification*

*Technical change.*

**Amendment 108**

**Proposal for a regulation**  
**Article 37 – paragraph 3**

*Text proposed by the Commission*

3. The delegation of power referred to in Articles **3(6)** and **9(1)** 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 the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

*Amendment*

3. The delegation of power referred to in Articles **3(5)** and **10** 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 the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

Or. en

*Justification*

*Technical change.*

**Amendment 109**

**Proposal for a regulation**  
**Article 39 – paragraph 2 – subparagraph 1**

*Text proposed by the Commission*

This Regulation shall apply from **six** months after its entry into force.

*Amendment*

This Regulation shall apply from ... **[two** months after its entry into force].

Or. en

## **Amendment 110**

### **Proposal for a regulation Annex I – title (new)**

*Text proposed by the Commission*

*Amendment*

#### *Annex I*

*List of indicators to be used by the providers of core platform services when measuring active monthly end users for the purposes of Article 3(1), point (b)*

Or. en

## **Amendment 111**

### **Proposal for a regulation Annex I – paragraph 1 – point a (new)**

*Text proposed by the Commission*

*Amendment*

#### *(a) App stores*

*- Number of users having downloaded at least one app and/or having made at least one in-app purchase via the app store provider or have inserted at least one query during the month*

Or. en

## **Amendment 112**

### **Proposal for a regulation Annex I – paragraph 1 – point b (new)**

*Text proposed by the Commission*

*Amendment*

#### *(b) Online market places*

*- Number of unique visitors, based on the number of IP addresses with active sessions that inserted at least one query*

*- Number of unique end users that transacted in any way (including by*

*clicking on a link, inquiring about specific goods or services, etc.) with business users - Online search engines*  
*- Number of IP addresses with active sessions that inserted at least one query*

Or. en

### **Amendment 113**

#### **Proposal for a regulation Annex I – paragraph 1 – point c (new)**

*Text proposed by the Commission*

*Amendment*

*(c) Online social networking services*  
*- Number of users that used the service at least once in the month by clicking on, liking, querying or otherwise engaging with it*

Or. en

### **Amendment 114**

#### **Proposal for a regulation Annex I – paragraph 1 – point d (new)**

*Text proposed by the Commission*

*Amendment*

*(d) Video-sharing platform services*  
*- Number of IP addresses with active sessions that used the service at least once in the month*  
*- Number of unique site visitors playing a video*

Or. en



## **Amendment 115**

### **Proposal for a regulation Annex I – paragraph 1 – point e (new)**

*Text proposed by the Commission*

*Amendment*

***(e) Number-independent interpersonal communication services***

***- Users with an account that sent a message at least once in the month***

***- Number of unique users that sent or received a message***

Or. en

## **Amendment 116**

### **Proposal for a regulation Annex I – paragraph 1 – point f (new)**

*Text proposed by the Commission*

*Amendment*

***(f) Operating systems***

***- Number of monthly active devices (i.e. a device running on any version of the OS that is still active and which was used in any way at least once in that month) with a given autonomous operating system***

***- Installed base of unique users***

Or. en

## **Amendment 117**

### **Proposal for a regulation Annex I – paragraph 1 – point g (new)**

*Text proposed by the Commission*

*Amendment*

***(g) Cloud computing services***

Or. en

## Amendment 118

### Proposal for a regulation Annex I – paragraph 1 – point h (new)

*Text proposed by the Commission*

*Amendment*

***(h) Online advertising services***

Or. en

## Amendment 119

### Proposal for a regulation Annex I – paragraph 2 (new)

*Text proposed by the Commission*

*Amendment*

***2. List of indicators to be used by the providers of core platform services when measuring yearly active business users for the purposes of Article 3(1), point (b)***

Or. en

## Amendment 120

### Proposal for a regulation Annex I – paragraph 2 – point a (new)

*Text proposed by the Commission*

*Amendment*

***(a) App stores***  
***- Number of app developers whose app has been downloaded or has offered at least one app for sale in a given year on app store***

Or. en

## **Amendment 121**

### **Proposal for a regulation Annex I – paragraph 2 – point b (new)**

*Text proposed by the Commission*

*Amendment*

#### ***(b) Market places***

***- Number of traders concluding at least one transaction on the CPS in a given year***

***- Number of traders listing a new good/item on the CPS in a given year***

***- Number of traders using any 'paid ranking' service on the CPS in a given year - Online search engines - Number of corporate website users indexed by the online search engine at any given point in a given year***

Or. en

## **Amendment 122**

### **Proposal for a regulation Annex I – paragraph 2 – point c (new)**

*Text proposed by the Commission*

*Amendment*

#### ***(c) Online social networking services***

***- Number of businesses with an active page in the social network in a given year***

***- Number of app developers integrating with the social network in a given year***

Or. en

## **Amendment 123**

### **Proposal for a regulation Annex I – paragraph 2 – point d (new)**

*Text proposed by the Commission*

*Amendment*

***(d) Video-sharing platform services***

***- Number of providers of content/publishers with at least one piece of content/video published per year***

***- Number of professional users that engaged in any way with the CPS in a given year, including by subscribing end users of the same CPS, by using ‘paid ranking services’ of the CPS, by adding any new content or otherwise***

Or. en

**Amendment 124**

**Proposal for a regulation**

**Annex I – paragraph 2 – point e (new)**

*Text proposed by the Commission*

*Amendment*

***(e) Number-independent interpersonal communication services***

***- Number of professional users that used any chat-like functionality to communicate directly with an end users user of an NI-ICS in a given year***

***- Number of businesses with business accounts used at least once for communication with end users in a given year***

Or. en

**Amendment 125**

**Proposal for a regulation**

**Annex I – paragraph 2 – point f (new)**

*Text proposed by the Commission*

*Amendment*

***(f) Operating systems***

***- Number of professional users that called any of the OS APIs at least once in a given year***

Or. en

**Amendment 126**

**Proposal for a regulation**

**Annex I – paragraph 2 – point g (new)**

*Text proposed by the Commission*

*Amendment*

***(g) Cloud computing services***

***- Number of professional users having contracted cloud services at any point in a given year***

Or. en

**Amendment 127**

**Proposal for a regulation**

**Annex I – paragraph 2 – point h (new)**

*Text proposed by the Commission*

*Amendment*

***(h) Online advertising services***

Or. en

## EXPLANATORY STATEMENT

### 1. Background

On 15 December 2020, the Commission submitted to the European Parliament and to the Council a proposal for a Regulation on contestable and fair markets in the digital sector (“Digital Markets Act”). The Digital Markets Act, together with the Digital Services Act, is part of the Commission’s European Digital Strategy, “Shaping Europe’s Digital Future”, which aims at reforming the European digital space, by setting a comprehensive set of new rules for all digital services, including social media, online market places, and other online platforms that operate in the European Union.

The Digital Markets Act proposal builds on the horizontal Platform to Business Regulation, and aims at ensuring a contestable and fair digital sector, with a view to promoting innovation, high quality of digital products and services, fair and competitive prices, as well as a high quality and choice for business and end users in the digital sector. The proposal is a response to IMCO’s legislative [own initiative report](#) that was adopted by the plenary on 20 October 2020 (2020/2018 (INL)).

### 2. Draft Report

The Rapporteur fully supports the overall objectives of the proposed Regulation, namely to ensure the proper functioning of the internal market by promoting contestable and fair markets in the digital sector. The Rapporteur also supports the specific objectives of (i) addressing market failures to ensure contestable and competitive digital markets for increased innovation and consumer choice, (ii) addressing gatekeepers’ unfair conduct; and (iii) enhancing coherence and legal certainty to preserve the internal market.

The Rapporteur highlights the positive contribution made by the platform economy to the GDP and the European economy as a whole. He believes that the COVID-19 outbreak has forced many businesses in Europe to go online since, for quite some time, this was their only option to reach out to users and consumers. The Rapporteur believes that, in the long term, such a forced digital transition may have a positive impact in the Digital Single Market as more and more businesses in Europe realise that their markets extend beyond national boundaries.

In this context, the Rapporteur recalls that today, many large online platforms provide effective gateways for a large number of business users, to reach end users, throughout the Union and beyond. Online platforms have had a significant impact on the internal market by facilitating cross-border trade and by opening entirely new business opportunities to a large number of European companies. At the same time, the Rapporteur acknowledges that, due to their dimension and the characteristics of the digital economy, some of these platforms may also act as “gatekeepers” with the ability and the incentive to engage in unfair practices, thereby preventing other businesses to grow. Competition law enforcement in digital markets, though very important, has not been effective enough in dealing with all problems in these markets and has not been able to remedy, let alone prevent, harm to consumers.

For these reasons, the Rapporteur is convinced that this Regulation is a very timely proposal that should be adopted and enforced without delay. By setting clear rules on what companies

with “gatekeeper” status are allowed *to do* and *not to do* in the European Union, this Regulation creates a level playing field for the digital economy that will hopefully be seized upon by many businesses within and outside Europe, to the benefit of European consumers.

In view of these considerations, the Rapporteur welcomes the proposal and suggests strengthening some elements of the proposed Regulation with the following main modifications, also because the resources of the European Commission will always be limited.

## **2.1 Definition and designation of gatekeepers**

The Rapporteur believes that the DMA should be clearly targeted to those platforms that play an unquestionable role as gatekeepers due to their size and their impact on the internal market. To this end, the Rapporteur deems it appropriate to increase the quantitative thresholds and to add - as an additional condition for companies to be designated as gatekeepers under Article 3(2) of the Regulation - that they are providers of not only one but, at least, two core platform services. The provision of two or more core platform services is also an important indicator of the role of these companies as providers of ecosystems of services.

These changes should not preclude the Commission’s ability to designate as gatekeeper other providers of core platform services, following an assessment under Article 3(6). At the same time, such a thorough analysis should not be required (nor would it be justified) where companies meet the quantitative presumptions of Article 3(2).

The Rapporteur is of the opinion that the application of this Regulation should be fast and efficient. Companies are expected to cooperate but if they do not, the Commission should be able to designate a provider of core platform services as a gatekeeper based on the facts available. At the same time, legal predictability should be enhanced. To this end, the Rapporteur proposes a list of indicators to be added as an Annex to this Regulation, in order to enable providers of core platform services to know in advance how to establish the number of monthly active end-users and yearly active business users for the purposes of Article 3(2).

## **2.2 Obligations and prohibitions**

The Rapporteur notes that a different clustering of the obligations and prohibitions could have brought added value to this Regulation. Nevertheless, the Rapporteur also sees merit in the segmentation proposed by the Commission, which identifies the obligations susceptible of being further specified, to the benefit of an effective application of the Regulation. The Rapporteur suggests that further changes should be made, clarifying that the obligations and prohibitions foreseen in the Regulation are self-executing, and that gatekeepers are expected to ensure compliance as soon as the Regulation enters into force. Furthermore, the Rapporteur is of the view that the regulatory dialogue should foresee the possibility for the Commission to market-test the measures the gatekeeper is expected to implement in order to ensure effective compliance with the Regulation. The Rapporteur proposes that the anti-circumvention prohibition should be strengthened to prohibit gatekeepers from engaging in any behaviour that would, in practice, have the same object or effect as the practices listed in Articles 5 and 6.

## **2.3 Market investigation and structural remedies**

The Rapporteur submits that the Commission should be allowed to request national authorities

to support market investigations for the designation of gatekeepers. In addition, the imposition of structural remedies should be possible after the adoption by the Commission of two non-compliance decisions. The Rapporteur holds that such an approach is justified given the *ex ante* self-executing nature of the Regulation. For the same reason, the Rapporteur proposes that the adoption of commitment decisions should not be possible.

#### **2.4 Governance, enforcement and regulatory consistency**

The Rapporteur is of the opinion that the nature of digital services means that different regulatory regimes will inevitably interlink and overlap. For this reason, the Rapporteur proposes the creation of a High Level Group of Digital Regulators, bringing together representatives of the competent authorities of all Member States, the Commission, as well as any relevant EU bodies and other representatives of competent authorities in specific sectors. Such a High Level Group should facilitate cooperation and coordination between the Commission and Member States in their enforcement decisions, in the interest of a consistent regulatory approach. The High Level Group should also assist the Commission in monitoring compliance with this Regulation by enabling the pooling of insight, resources and expertise across Europe to the benefit of EU consumers and the internal market.



**ANNEX: List of entities or persons  
from whom the rapporteur has received input**

The following list is drawn up on a purely voluntary basis under the exclusive responsibility of the rapporteur. The rapporteur has received input from the following entities or persons in the preparation of the [draft report / report, until the adoption thereof in committee]:

Entity and/or person
Santander
Allegro
BBVA
Google
Vodafone
Kelkoo Group
CCIA Europe
Apple
Prof Marco Siragusa
ACT APP Association
ARD/ ZDF
Springer
Match group
Apple
Netflix
Santander
Criteo
IBM
BEUC
Expedia
Salseforce
Amazon
Yelp
Google
AT&T
Spotify
CCIA Europe
EMMA/ENPA
Snapchat
Booking.com
Eurocommerce
Facebook
Vaunet
ECOSIA
European Publishers Council

Bundesdruckerei
Independent Retail Europe
Reporters sans Frontières/Reporters without borders
GSMA
ETNO
ITI – The Information Technology Industry Council
DuckDuckGo
BDZV/VDZ
European Broadcasting Union (EBU)
Handelsverband Deutschland (HDE)
Eurochambres
VZBV
ZEV
Prof. Heike Schweizer
Prof. Ruprecht Podszun
Prof. Christian Kersting
Prof. Nicolas Petit
Prof. Graef