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From:	General Secretariat of the Council
To:	Working Party on Competition
Subject:	Digital Markets Act proposal: Table for MS comments on articles of the second compromise text (doc. ST 11698/21)

Delegations will find attached a revised table for MS comments on articles of the second compromise text (doc. ST 11698/21) in view of the Working Party on Competition on 4 October 2021, 14h30.

Table for comments on the ARTICLES of Doc. 11698/21 Presidency compromise text on the Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on contestable and fair markets in the digital sector (Digital Markets Act)

Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on contestable and fair markets in the digital sector (Digital Markets Act)	**FI - BE - NL - DK - AT - DE - LU - PT - CZ - ES - SE - IE - FR - LV - LT - PL - SK** **MS drafting suggestions and comments**
Chapter I	SK (Comments): We consider the current proposal (2nd consolidated version) as more **balanced and proportionate. Unless commented, we accept the amendments as they were provided.**
Subject matter, scope and definitions	
Article 1 Subject-matter and scope	PT (Comments): PT agrees in general with the current draft of Article 1.
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.	
2. This Regulation shall apply to core platform services provided or offered by gatekeepers to business users established in the Union or end users established or located in the Union, irrespective of the place of establishment or residence of the gatekeepers and irrespective of the law otherwise applicable to the provision of service.	

3. This Regulation shall not apply to markets:	
(a) related to electronic communications networks as defined in point (1) of Article 2 of Directive (EU) 2018/1972 of the European Parliament and of the Council[1];	
(b) related to electronic communications services as defined in point (4) of Article 2 of Directive (EU) 2018/1972 other than those related to **number-independent** interpersonal communication services as defined in point (~~4~~)(~~b~~)**7)** of Article 2 of that Directive.	DK (Comments): We support this amendment. ES (Comments): The new wording is welcomed as it provides a further clarification about the connection and coexistence of the DMA and the European Electronic Communications Code. LT (Comments): We support this amendment.

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

4. With regard to interpersonal communication services this Regulation is without prejudice to the powers and tasks granted to the national regulatory and other competent authorities by virtue of Article 61 of Directive (EU) 2018/1972.	FI (Drafting): 4. With regard to interpersonal communication services this Regulation is without prejudice to the powers and tasks granted to the national regulatory and other competent authorities by virtue of Article 61 of Directive (EU) 2018/1972. **In addition, this Regulation is without prejudice to the powers and tasks granted to the supervisory authorities and European Data Protection Board by virtue of Regulation (EU) 2016/679 and Directive 2002/58/EC.** FI (Comments): In order to ensure coherent application of EU law, the Regulation should specify that it is without prejudice to the powers and tasks granted to the supervisory authorities and European Data Protection board by virtue of Reg. (EU) 2016/679 and Directive 2002/58/EC.
	DE (Drafting): With regard to payment services in the internal market this Regulation is without prejudice to the powers and tasks granted by Directive (EU) 2015/2366. This Regulation is without prejudice to Regulation (EU) 2016/679 and

	Directive 2002/58/EC, unless it expressly provides for complementing or stricter rules. DE (Comments): As there is a potential overlap between the Directive (EU) 2015/2366 and the DMA in that regard, we propose to clarify their relationship. The relationship between GDPR and DMA should be clear and unambiguous. According to the recitals, the DMA is intended to complement the GDPR. It should be made clear in the articles that this means that the DMA will in some cases contain additional or stricter rules, but the level of the GDPR will not be lowered. We therefore suggest the addition of a paragraph 6a to Article 1, which would also make clear that the entire GDPR applies where personal data is concerned, unless this Regulation imposes stricter requirements at some specific points and with regard to specific aspects (e.g. legal bases). SK (Drafting): **4a**. "Union and national law on the protection of personal data shall apply to any personal data processed in connection with this Regulation. In particular, this Regulation shall be without prejudice to Regulation (EU) 2016/679 and Directive 2002/58/EC, including the powers and competences of supervisory authorities. In the event of conflict between the provisions of this Regulation and Union or national law on the

	protection of personal data, Union or national law prevails. This Regulation does not create a legal basis for the processing of personal data and does not alter any obligations and rights set out in Regulation (EU) 2016/679 or Directive 2002/58/EC." SK (Comments): We suggest, in view of a stronger legal certainty, to **accent the relationship with other legal acts**, especially that of GDPR (as already referred to by this Regulation).
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~~**Nothing** in this Regulation precludes Member States from imposing obligations, which are compatible with Union law, on undertakings, including ~~providers of~~ **undertakings providing** core platform services**, for matters falling outside the scope of this Regulation,** where these obligations do not result from 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~~.	FI (Drafting): 5. **In order to ensure the frictionless and coherent application of this Regulation throughout the internal market and to guarantee a fully harmonized approach, the European Commission shall be the sole enforcer and decision maker on the correct application of the rules and obligations outlined in this Regulation.** 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~~**Nothing** in this Regulation precludes Member States from imposing obligations, which are compatible with Union law, on undertakings, including ~~providers of~~ **undertakings providing** core platform services**, for matters falling outside the scope of this**

	Regulation, where these obligations do not result from 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~~. FI (Comments): FI considers that in order to ensure harmonization and to prevent fragmentation, Art. 1(5) should clearly state the Commission's role as the sole enforcer and decision maker. BE (Comments): **BE** thanks the Slovenian presidency for taking into account the LU-BE proposal for more clarity in article 1.5. However we believe this change should also be reflected in the recitals. We therefor refer to the comments in the recitals. DK (Comments): We support this amendment as it clarifies the harmonization effect that the proposal has to achieve. In particular, we fully support the deletion of "act of unfair competition". As we previously mentioned, that expression could cause confusion with

	the purpose of "fairness" pursued under the present proposal. AT (Drafting): 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 do not result from 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. AT (Comments): The new text of Art. 1 (5) does even raise more questions, as it is not clear what is a "matter outside the scope". In our view, the new text does not ensure sufficient flexibility. It is essential to have the possibility for quick reactions at a national level. We can support the German comments made on the first compromise text. But for compromise reasons we suggest to returning to the previous version of Art. 1 (5).

	DE (Comments): While we welcome the proposed amendment, as it provides legal certainty that Member States remain in the position to impose additional obligations on gatekeepers outside the scope of the DMA. We understand that this allows all kind of regulations that pursue a different goal as the DMA and therefore includes all other legitimate interest. However, for legal certainty, the recital **should provide a reference to "legitimate interests" and that these include the protection of cultural and linguistic diversity and the defence of pluralism are legitimate public interests in the sense of Article 1 (5).** LU (Drafting): 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~~**Nothing** in this Regulation precludes Member States from imposing obligations, which are compatible with Union law, on undertakings, including ~~providers of~~ **undertakings providing** core platform services**, for matters falling outside the scope of this Regulation,** where these **obligations are unrelated to** ~~do not result from~~ 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~~. LU (Comments): Strong support with suggested change for full integration of BE-LU proposal and sticking to the Portuguese Presidency text. PT (Comments): PT welcomes the changes proposed in line with the BE/LU proposal, which strengthen the harmonization effect of the Regulation. ES (Comments): ES maintains scrutiny reserve on this article. SE (Comments): SE welcome the amendments. IE

	(Drafting): In order to ensure the frictionless and coherent application of this Regulation throughout the internal marker and to guarantee a fully harmonized approach, the European Commission shall be the sole enforcer and decision maker on the correct application of the rules and obligations outlined in this Regulation. 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~~**Nothing** in this Regulation precludes Member States from imposing obligations, which are compatible with Union law, on undertakings, including ~~providers of~~ **undertakings providing** core platform services**.** IE (Comments): It is important to state clearly in Article 1 the Commission will be the sole enforcer of this Regulation. FR

	(Drafting): 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 and unfair trading practices in business-to-business relationships. FR (Comments): The French authorities do not agree with this modification that remove the Member States ability to impose new obligations to the gatekeepers when other legitimate public interests than contestability and fairness are at stake. It seems necessary to secure the application of national law on restrictive business practices to gatekeepers (cross-cutting regulation which is not

	specific to the types of businesses and services covered by the Regulation) and to deal with some public interest issues (such as objectives linked to pluralism and cultural diversity or consumer protection) without being incompatible with the Union law. LT (Comments): We support this amendment as it clarifies the harmonization effect that the proposal has to achieve. In addition, we support any changes, which would clarify that the Commission is the sole enforcer and decision maker of the Regulation PL (Comments): We still have some concerns regarding the relation between the DMA and the existing national and EU competition law. Even though the scope of the DMA is to be complementary to these legislation, one cannot rule out potential conflicts between these two regimes (especially in relation to undertakings bearing the status of gatekeepers). Therefore, we think it needs to be further clarified and it should be explained how potential conflicts on this basis are going to be solved in the future. SK (Drafting): 5. **In order to ensure the frictionless and coherent application of this**

	Regulation throughout the internal market and to guarantee a fully harmonized approach, the European Commission shall be the sole enforcer and decision maker on the correct application of the rules and obligations outlined in this Regulation. 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~~**Nothing** in this Regulation precludes Member States from imposing obligations, which are compatible with Union law, on undertakings, including ~~providers of~~ **undertakings providing** core platform services**, for matters falling outside the scope of this Regulation,** where these **obligations are unrelated to** ~~do not result from~~ 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~~. SK (Comments): We support the amendments made to the consolidated text. **We are still of support of the LU_BE proposal in its entirety, and propose amendments according to our LU_BE colleagues.**

	We remain of the opinion that the supervision of the regulation **should be the sole responsibility of the EC**. We would welcome, if this par. could add **a clear notion/statement** that EC will remain the sole enforcer a decision maker on the application of the rules and obligation of this Regulation. (in support of the FI proposal).
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 amount to imposing additional obligations on gatekeepers; **and** Council Regulation (EC) No 139/2004[2] and national rules concerning merger control~~; Regulation (EU) 2019/1150 and Regulation (EU) …./.. of the European Parliament and of the Council~~[3].	FI (Comments): FI considers that further revision of Article 1(6) may be required as the scope of Article 1(5) is narrower under the Compromise Text. DE (Drafting): 6. This Regulation is without prejudice to ~~the application of~~ Articles 101 and 102 TFEU, to the corresponding ~~. It is also without prejudice to the application of:~~ national competition rules and to other national competition rules regarding unilateral behaviour that are based on an

[2] 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).

[3] ~~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.~~

	individualised assessment of market positions and behaviour, including its likely effects and the precise scope of the prohibited behaviour, and which provide for the possibility of undertakings to make objective justification arguments for the behaviour in question. This regulation is also without prejudice to ~~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 amount to imposing additional obligations on gatekeepers~~; **and** Council Regulation (EC) No 139/2004[4] and national rules concerning merger control~~; Regulation (EU) 2019/1150 and Regulation (EU) …./.. of the European Parliament and of the Council~~[5]. DE (Comments): **For legal certainty Article 1 (6) should clearly define what is covered by the term "national competition rules" and (in particular) that this includes stricter national rules for unilateral conduct within the meaning of Article 3 Regulation 1. This should be done by using the definition introduced in Recital 9. As an alternative, one could refer**

[4] 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).

[5] ~~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.~~

	to Regulation 1/2003. **The sentence "insofar as they are applied to undertakings other than gatekeepers or amount to imposing additional obligations on gatekeepers" is in our view not necessary and can be a source of misunderstanding. It should therefore be deleted. If competition law protects a different legal interest and is complementary to the DMA, the only way it could possibly interfere with the DMA is by explicitly allowing a certain behaviour that is not allowed under the DMA.** LU (Drafting): 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 amount to imposing additional obligations on gatekeepers~~; **and** Council Regulation (EC) No 139/2004[6] and national rules concerning merger

[6] 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).

	control~~; Regulation (EU) 2019/1150 and Regulation (EU) …./.. of the European Parliament and of the Council~~[7]. LU (Comments): In order to avoid DMA-like rules at national level, which may have a competition legal basis in national law, which would lead to undesirable fragmentation of rules, we propose to limit the scope of this provision. PT (Comments): PT agrees and supports the current draft of this provision, which is now focused only on ensuring a coherent interplay between the DMA and competition rules. PT agrees with the principle that the enforcement of DMA is complementary to the enforcement of competition rules. LT (Drafting): LT

[7] ~~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.~~

	(Comments): We support the amendment. At the same time, we support proposals, made by other MSs, to avoid the DMA-like rules at national level. LT could support further clarification on the relation between DMA, competition law, Art. 102 of the Treaty, including clearer description of wordings used in Art. 1.6, e.g. "other forms of unilateral conduct"; possibly wider scope of national rules designed on the grounds of Art. 3(2) of Reg. 1/2003 and Art. 102 of the Treaty which may overlap with the DMA. It is particularly important to avoid any ambiguities listing "without prejudice" cases. However, any amendments to Art 1.6 should be made in the light of the Article 114 TFEU and an opinion of the Council Legal Services. PL (Comments): In our opinion, it is vital that any action undertaken by the Commission does not interfere or hinder the execution of competition law by NCAs. As it was indicated above, in our position to Art. 1.5 – potential conflicts are possible. Recitals 9-12 should expand on how to better avoid such conflicts.

7. The Commission and Member States shall ~~work~~ cooperate and coordinate in their enforcement actions on the basis of the principles and rules established in Article 32a.	NL (Comments): See the proposal from FR DE NL on a new chapter X. If that chapter is implemented, this paragraph needs to refer to that new chapter. DK (Drafting): 7. The Commission and Member States shall ~~work~~ cooperate and coordinate in their enforcement actions on the basis of the principles and rules established in Article 32a. DK (Comments): We support the change. FR (Drafting): **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 on the basis of the principles

	and rules established in **Articles X1, X2 and X3**. LT (Comments): We support the change. SK (Comments): We remain of the opinion that the supervision of the regulation **should be the sole responsibility of the EC**. We support the changes in the regulation in the sense, that the greater role of national authorities will be based on voluntary nature/agreement and **no implication obliging national authorities to supervise the regulation** remains valid. **We support solely this model of enforcement.** Also in accordance to our comments **on art. 32a**.
Article 2 Definitions	PT (Comments): PT agrees in general with the current draft of Article 2.

For the purposes of this Regulation, the following definitions apply:	DK (Drafting): 1. For the purposes of this Regulation, the following definitions apply: LT (Drafting): 1. For the purposes of this Regulation, the following definitions apply:
(1) 'Gatekeeper' means an undertaking providing core platform services designated pursuant to Article 3;	
(2) 'Core platform service' means any of the following:	NL (Comments): The NL is still missing some clarity on what constitutes one CPS; e.g. if a social networking service offers a market place that is only accessible through the social network, are they two separate CPS (one social networking service and one online intermediation service), is the market place an ancillary service to the social networking service, or is it a feature (and therefore all one service)? This matters quite a bit for the application of articles 5 and 6 as well as for gatekeeper designation. This needs some more clarification.

	DK (Drafting): 'Core platform service' means digital services that intermediate between business uses and end-users and are characterized by features that may enable these services to serves as an important gateway for business users to reach end users. "Core platform service" means any of the following: DK (Comments): We propose to introduce a flexible definition of "core platform services". This is a key notion in determining the application and future amendments of the proposal. In our view, the proposed definition is capable to create more transparency and legal certainty. At the same time, it does not impose excessive restraints, which could limit the possibility to amend the list of CPSs in the future. AT (Comments): We are open to extend the list of core platform services to Webbrowser and Virtual Assistants. We also support a comment made by the German Delegation in the WP Sept, 14th that it should be clarified that Voice Assistants are already covered insofar they are operated by CPS (eg.

	online intermediation services, online search engine). DE (Comments): **We maintain the view that the list of "core platform services" should include web browsers and voice assistants.** Web browsers and voice assistants are typical gateways between end users and businesses and are gaining a more and more significant role as entry point for whole markets. Additionally, legally certain definitions should be included in Article 2. With a view to web browsers, we would propose to use the definition in the Android case as inspiration. A possible definition might read as follows: (10a) 'Web browsers' are software used by users of client PCs, smart mobile devices and other devices to access and interact with web content hosted on servers that are connected to networks such as the Internet, including standalone web browsers as well as web browsers integrated or embedded in software or similar." In case that web browsers would be added to the list of core platform services, web browser should be obliged to accept and display QWACS (Qualified Website Authentication Certificates) recognized under the eIDAS Regulation (Art. 3(39) eIDAS). This would be in line with the aim to prevent unfair behaviour against economically dependent business users and additionally serve to build trust in conducting business online. LT

	(Comments): We support the list of the CPSs, as provided in this compromised text. If there is a need to clarify that following CPSs cover others, e.g. as it might be the case with voice assistance, we recommend adding this explanation into the recitals.
(a) online intermediation services;	
(b) online search engines;	
(c) online social networking services;	
	FR (Drafting): (d) web browsers FR (Comments): The French authorities consider that web browsers meet the criteria set out in recitals 2 and 12, which led the Commission to draw up the list of essential platform services that may be regulated. Web browsers make it possible to link many user companies with many end users by acting as an essential gateway to the Internet.

(d) video-sharing platform services;	
(e) number-independent interpersonal communication services;	FI (Comments): FI proposes to delete this definition. Although number-independent interpersonal communication services plays important role in digital markets, FI sees that they might not meet the criterion of functioning as an important gateway as is required by Article 3(1)(b). Therefore, it is questionable to include these services in the scope of the Regulation.
(f) operating systems;	
(g) cloud computing services;	FI (Comments): FI still has some reservations for including cloud computing services in the scope of the Regulation. It appears somewhat unclear how cloud computing services could meet the requirement of functioning as an important gateway as is required by Article 3(1)(b). Therefore, it is important to carefully evaluate if it is justified to include these services in

	the scope of the Regulation. LU (Drafting): ~~(g) cloud computing services;~~ LU (Comments): We are not convinced that cloud computing services are functioning as an "important gateway" as per Article 3(1)(b), on the same level that operating systems or online networking services may be. The cloud market (IaaS, PaaS, SaaS) seems sufficiently competitive. SK (Drafting): ~~(g) cloud computing services;~~ SK (Comments): As we understand the argumentation of the EC regarding the inclusion of cloud computing services into the Regulation (lock-in effects control of infrastructure, possible migrations of services etc.) **we still like to appeal for considering including this specific type of services into the Regulation.**

	We do not support the inclusion; we opt for its deletion from the scope of this Regulation.
(h) advertising services, including any advertising networks, advertising exchanges and any other advertising intermediation services, provided **by** an undertaking providing any of the core platform services listed in points (a) to (g);	DE (Comments): We strongly suggest further definition of what constitutes "advertising intermediation services". Does this cover every bundle of advertising inventory offered by an ad distributor? FR (Comments): French authorities wonder if this definition captures advertising intermediation services which are note provided by another CPS. If it is not the case, should an adjustment to this definition be considered?
	BE (Drafting): (i) web browsers; BE

	(Comments): **BE** supports the proposal made by DE and FR to include web browsers in the list of core platform services. FR (Drafting): (3) 'Virtual assistant' means a software that can perform tasks or services for end-users based on commands or questions.
(3) 'Information society service' means any service within the meaning of point (b) of Article 1(1) of Directive (EU) 2015/1535;	
(4) 'Digital sector' means the sector of products and services provided by means of or through information society services;	
(5) 'Online intermediation services' means services as defined in point 2 of Article 2 of Regulation (EU) 2019/1150;	
(6) 'Online search engine' means a digital service as defined in point 5 of Article 2 of Regulation (EU) 2019/1150;	
(7) 'Online social networking service' means a platform that enables end users to connect, share, discover and communicate with each other across multiple devices and, in particular, via chats, posts, videos and recommendations;	DK (Comments): We note that the compromise text has not addressed uncertainties in the definition of "online social networking services".

	As we previously stated, defining social networks can be difficult and further elaboration is needed. E.g. how to distinguish between online social networking services that enable users to communicate with each other (e.g. via chats) vs. number independent interpersonal communication services, or how it will be determined which features of a social network are part of the CPS. However, we look forward to discuss the Annex setting out the methodology to measure active end and business users at next WP (27/9). LT (Comments):
	FR (Drafting): (8) 'Web browser' means a software which allow to have access to information on the World Wide Web.
(8) 'Video-sharing platform service' means a service as defined in point (aa) of Article 1(1) of Directive (EU) 2010/13[8];	NL (Comments):

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

	To the NL, this definition could imply that video-sharing platform services are a special case of online social networking services (i.e. in our view, video sharing platforms usually also 'enable end users to connect, share, discover and communicate with each other across multiple devices and, in particular, via chats, posts, videos and recommendations'). If so, this category of CPS is **redundant**, especially since the DMA contains no obligations that only apply to video sharing platforms (or online social networking services, for that matter). If not, the difference should be clarified.
(9) 'Number-independent interpersonal communications service' means a service as defined in point 7 of Article 2 of Directive (EU) 2018/1972;	
(10) 'Operating system' means a system software which controls the basic functions of the hardware or software and enables software applications to run on it;	
(11) 'Cloud computing services' means a digital service as defined in point 19 of Article 4 of Directive (EU) 2016/1148 of the European Parliament and of the Council[9];	SK (Drafting):

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

	~~'Cloud computing services' means a digital service as defined in point 19 of Article 4 of Directive (EU) 2016/1148 of the European Parliament and of the Council[10];~~ SK (Comments): We still opt and support to omit the (art. 2 par. 2 letter (g)) "cloud computing services" from the Regulation, we still do not see its thorough justification for inclusion under this Regulation.
(12) 'Software application stores' means a type of online intermediation services, which is focused on software applications as the intermediated product or service;	
(13) 'Software application' means any digital product or service that runs on an operating system;	
(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 of Directive (EU) 2015/2366 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;	NL (Comments): Any further clarity that can be given on this definition would be welcome. Although good examples are provided, the precise scope of this definition is still quite vague. This could lead to discussions with gatekeepers whether or not obligations involving ancillary services should fully apply

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

	or not. It would be wise to avoid this. DK (Comments): The second compromise text, similarly to the first compromise and the original Commission's proposal, does not clarify the definition of 'ancillary services', which appears very broad and includes "fulfilment services" and "advertising services". It appears necessary to clarify whether fulfilment services include physical infrastructures. Furthermore, it should be clarified (either in the operative part or in the recitals) how "advertising services" can be qualified both as CPSs (cfr. Article 2.2.h) and as ancillary services. ES (Comments): Further clarification on the list of services that would be included as "ancillary service" may be needed in order to ensure legal certainty and predictability. LT (Comments): As this definition has not improved, we maintain our position:

	LT, like many other MSs, would like to see a clearer definition (e.g. with explanations what constitutes fulfilment or advertising services and in which cases these services could be treated as ancillary/separate CPS) to avoid any ambiguity.
(15) 'Identification service' means a type of ancillary services that enables any type of verification of the identity of end users or business users, regardless of the technology used;	
(16) 'End user' means any natural or legal person using core platform services other than as a business user;	
(17) 'Business user' means any natural or legal person acting in a commercial or professional capacity using core platform services for the purpose of or in the course of providing goods or services to end users;	
(18) 'Ranking' means the relative prominence given to goods or services offered through online intermediation services ~~or~~**including** online social networking **services and video-sharing platform** services, or the relevance given to search results by online search engines, as presented, organised or communicated by the ~~providers of~~**undertaking providing** online intermediation services or of online social networking services or by ~~providers of~~**undertakings providing** online search engines, respectively, whatever the technological means used for such presentation, organisation or communication;	BE (Drafting): (18) 'Ranking' means the relative prominence given to goods or services offered through online intermediation services ~~or~~**including** online social networking **services and video-sharing platform** services, or the relevance given to search results by online search engines, as presented, organised or communicated by the ~~providers of~~**undertakings providing** online intermediation services or of online social networking services or by ~~providers of~~**undertakings providing** online search engines, respectively, whatever the technological means used for such presentation, organisation or communication;

	NL (Comments): In the NL view, it should cover all ways to give content prominence, so also tabs and boxes. This needs more clarification. DK (Drafting): (18) 'Ranking' means the relative prominence given to goods or services offered through online intermediation services or ~~or~~ online social networking services, or the relevance given to search results by online search engines, as presented, organised or communicated by the ~~providers of~~**undertaking providing** online intermediation services or of online social networking services or by ~~providers of~~**undertakings providing** online search engines, respectively, whatever the technological means used for such presentation, organisation or communication; DK (Comments): The second compromise text has not clarified the notion of ranking. In particular, the amendment makes it appears online social networking services and video-sharing platform services as sub-categories of online intermediation services. Differently, these services all represent independent core platform services. Therefore, we propose to delete the

	amendments included in the second compromise text. In addition, we believe that the notion of "ranking" should be functional to clarify the scope of application of the obligation in Art.6.1.d. Therefore, we reserve to propose further amendments on this definition with the purpose of clarifying e.g. whether ranking will include organic search or also e.g. the boxes in Google Search or the tables "maps", "pictures", etc. Finally, we note that the definition of ranking just refer to a selected number of CPSs. We thus wonder whether the definition of ranking can restrict the scope of application of the obligation in Art.6.1.d to just to those CPSs expressly mentioned. DE (Comments): We welcome the addition of video-sharing platform in the definition. FR (Drafting): 'Ranking' means the relative prominence given to goods or services offered through online intermediation services including online social networking services, software application stores, virtual assistants, and video-sharing platform services, or the relevance given to search results by online search engines, as presented, organised or communicated by the undertaking providing online intermediation services including software application stores and virtual assistants or of online social networking

	services or by undertakings providing online search engines, respectively, whatever the technological means used for such presentation, organisation or communication; FR (Comments): In this definition, only points (a) to (d) of the definition of "core platform services" of Article 2(2) have been included. Consistency with recitals 48 and 49 on obligation 6(d) [prohibition to grant more favourable treatment to one's own products in matters of classification]. On the one hand, it is useful to clarify that application stores are concerned by obligation 6(d) which refers to this definition of "ranking". On the other hand, even though the definition ends with "whatever the technological means used for such presentation, organisation or communication;", it is useful - for the sake of legal certainty - to clarify that rankings can be performed by virtual assistants. LT (Comments): We kindly ask to explain the reasons behind amendments (e.g. in the recitals), which *expand* the definition of ranking by including video-sharing platform services, herewith *expanding* an obligation, e.g. listed in Art 6.1d.

(19) 'Data' means any digital representation of acts, facts or information and any compilation of such acts, facts or information, including in the form of sound, visual or audiovisual recording;	DK (Comments): It should be clarified whether the notion of "data" is based on an existing definition, or whether it an autonomous concept developed in the DMA.
(20) 'Personal data' means any information as defined in point 1 of Article 4 of Regulation (EU) 2016/679;	
(21) 'Non-personal data' means data other than personal data as defined in point 1 of Article 4 of Regulation (EU) 2016/679;	
(22) 'Undertaking' means all linked enterprises or connected undertakings that form a group through the direct or indirect control of an enterprise or undertaking by another and that are engaged in an economic activity, regardless of their legal status and the way in which they are financed;	
(23) 'Control' means the possibility of exercising decisive influence on an undertaking, as understood in Article 3(2) of Regulation (EC) No 139/2004;	
(24) 'Turnover' means the amount derived by an undertaking as defined in Article 5(1) of Regulation (EC) No 139/2004;	
(25) 'Profiling' means profiling as defined in Article 4(4) of Regulation	

(EU) 2016/679;	
(26) 'Consent' ~~of the data subject~~ means consent as defined in Article 4(11) of Regulation (EU) 2016/679;	LT (Comments): We support the change.
(27) 'National court' means a court or tribunal of a Member State within the meaning of Article 267 TFEU.	
	DK (Drafting): New 2. The inclusion of additional services within the digital sector in the list of core platform services laid down in point 2 of Article 2 shall be based on a market investigation pursuant to Article 17. Where, following a market investigation, the Commission deems it necessary to include a new service, the Commission should advance a proposal to amend this Regulation. DK (Comments): This amendment does not include any novelty in the text – a similar provision and wording is already present under Art.17 and recital 33. The amendment just serves the function to provide more transparency and

	an immidiate understanding on the process to follow for the Commission to include a new CPS to the list.
Chapter II	
Gatekeepers	
Article 3 Designation of gatekeepers	PT (Comments): PT agrees in general with the current draft of Article 3. SK (Comments): We strongly **support the amendments** made to art. 3 regarding the logical and more structural, as well as clearer definitons of designation criteria (obligations) of GKs.
1. An undertaking shall be designated as gatekeeper if:	
(a) it has a significant impact on the internal market;	
(b) it provides a core platform service which serves as an important gateway for business users to reach end users; and	DK (Drafting):

	(b) it provides at least one core platform service listed in point 2 of Article 2, which serves as an important gateway for business users to reach end users; and DK (Comments): The proposed amendment does not have the intent of altering the quantitative threshold. Rather, the amendment only wants to emphasize that a gatekeeper is a provider of at least one core platform service. In our view, a stronger emphasis on this condition, which is a pre-condition for designating a platform as gatekeeper, is now necessary since throughout the whole proposal the wording "provider of core platform service" has been substituted with the wording "undertaking". LT (Comments):
(c) it enjoys an entrenched and durable position in its operations or it is foreseeable that it will enjoy such a position in the near future.	FR (Drafting): (c) it enjoys an entrenched and durable position in its operations or it is foreseeable that it will enjoy such a position ~~in the near future~~.

	FR (Comments): This amendment proposes to delete references to positions "in the near future" that lead to uncertainty as to its use.
2. An undertaking shall be presumed to satisfy:	
(a) the requirement in paragraph 1 point (a) where it achieves an annual EEA turnover equal to or above EUR 6.5 billion in each of the last three financial years, or where its average market capitalisation or its equivalent fair market value amounted to at least EUR 65 billion in the last financial year, and it provides the same core platform service in at least three Member States;	DE (Drafting): (a) the requirement in paragraph 1 point (a) where it achieves an annual EEA turnover equal to or above EUR 6.5 billion in each of the last three financial years, or where its average market capitalisation or its equivalent fair market value amounted to at least EUR 65 billion in the last financial year, and it provides the same core platform service used by a significant number of end users in each of at least three Member States; DE (Comments): The requirements listed in this paragraph lead to the presumption of a "significant impact on the internal market". However, it is unclear how one could infer such significance from a CPS merely being provided in at least three MS. It could be argued that making a CPS publicly available online makes it available in most to all Member States, even if the CPS

	was not used in a particular Member State at all or just in marginal numbers. Against this background, we suggest to add a significance threshold to put the presumption in line with the requirement of a "significant impact" in paragraph 1(a).
(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**. Monthly active end users and yearly active business users shall be measured taking into account the methodology set out in the Annex to this Regulation**;	BE (Comments): **BE** supports the initiative of an Annex to provide more clarity on the determination of monthly active end users and yearly active business users. DK (Comments): We support the amendment. DE (Drafting): (b) the requirement in paragraph 1 point (b) where it provides at least two core platform services from which at least one ~~that~~ has ~~more~~ equal to or higher 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 methodology set out in the Annex to this Regulation**; DE (Comments): **The gatekeeper definition covers a broad variety of undertakings, some larger and much more important to address in light of the DMA's goals than others. It seems useful to restrict – in light of the proportionality principle – at least the definition in Art. 3 para. 2 lit. b and to thereby limit the quantitative designation to those undertakings that have the strongest and severest impacts on digital markets.** The proposal for a Digital Services Act (DSA) defines very large platforms in Article 25 as those which provide their services to a number of average monthly active recipients of the service in the Union "equal to or higher than 45 million". In order to have a coherent approach between the DMA and DSA we support to use the same wording here. We welcome the idea to set define a methodology in an annex and we look forward to the Presidency's proposal. ES (Comments):

	The new wording is welcomed as it provides more legal certainty in the designation procedure. FR (Comments): The French authorities welcome the introduction of an appendix that explains the methodology to compute the number of active business and end users. LT (Comments): We support the amendment.
for the purpose of the first subparagraph, monthly active end users shall refer to the average number of monthly active end users throughout the largest part of the last financial year;	
(c) the requirement in paragraph 1 point (c) where the thresholds in point (b) were met in each of the last three financial years.	
3. Where an undertaking providing core platform services meets all the thresholds in paragraph 2, it shall notify the Commission thereof within ~~three~~**two** months after those thresholds are satisfied and provide it with the relevant information relating to the quantitative thresholds identified in paragraph 2. That notification shall include the relevant information relating to the quantitative thresholds identified in paragraph	FI (Comments):

2 for each of the core platform services of the undertaking 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).~~	NL (Comments): Has this point been removed on substance or because it is already clear from the rest of the text that this is required? We prefer the text not to be deleted, for clarification reasons. DK (Comments): We support the amendment. In particular, we believe that the reduction of the time-limit for the notification would not amount to an unreasonable burden for the gatekeeper. AT (Comments): We welcome the shorter deadline for the gatekeeper to notify. In view of the prolonging of the deadline in Art. 39 (Entry into force) the shortening at this point is indispensable. DE (Comments): We welcome the amendment to shorten the notification period to two

	months. FR (Comments): French authorities agree with the removal of the last sentence only if a mechanism as proposed in Article 3(7) is added. In fact, without this obligation to update the notification without delay when a CPS meets the thresholds of Article 3.2.b, the Commission is not in a position to update the list of regulated CPS as soon as possible after its initial designation decision. LT (Comments): We support MSs requesting 3 months. Argumentation: we are concerned about the number of implementing acts and delegated acts the Cion will be obliged to adopt within 6 months period. If the relevant documents will be adopted and published at the very end of the deadline or even after the deadline (there is always a possibility) – 2 months period might be too short.
Should the Commission consider that an undertaking providing core platform services meets all the thresholds provided in paragraph 2, but has failed to notify the required information pursuant to the first subparagraph of this paragraph, the Commission shall require that undertaking pursuant to Article 19 to provide the relevant information relating to the quantitative thresholds identified in paragraph 2 within 10 working days.	LU (Drafting): ~~A failure by a relevant~~Should the Commission consider that an ~~provider of~~undertaking providing core platform services meets all the thresholds

The failure by the undertaking providing core platform services to comply with the Commission's request pursuant to Article 19 shall not prevent the Commission from designating that undertaking as a gatekeeper based on any other information available to the Commission. Where the undertaking providing core platform services complies with the request, the Commission shall apply the procedure set out in paragraph 4.	provided in paragraph 2, but has failed to notify the required information pursuant to the first subparagraph of this paragraph, the Commission shall require that undertaking pursuant to Article 19 to provide the relevant information relating to the quantitative thresholds identified in paragraph 2 within 10 working days. The failure by the undertaking providing core platform services to comply with the Commission's request pursuant to Article 19 shall not prevent the Commission from designating ~~these providers~~that undertaking as a gatekeepers~~s~~ based on any ~~other~~ **evidenced** information **demonstrating that the quantitative thresholds are met** available to the Commission. Where the undertaking providing core platform services complies with the request, the Commission shall apply the procedure set out in ~~pursuant to~~ paragraph 4 ~~at any time~~. LU (Comments): The 10 deadline is very short for a gatekeeper to provide the quantitative information. Therefore, at least, the Commission shall designate a gatekeeper not solely based on "any information available" but there needs to be clear evidence and demonstration that the quantitative thresholds are met. "Any information" is too vague and unreliable. SK (Drafting): "Should the Commission consider that an undertaking providing core platform services meets all the thresholds provided in paragraph 2, but has failed to notify the required information pursuant to the first subparagraph of this paragraph, the Commission shall require that undertaking pursuant

	to Article 19 to provide the relevant information relating to the quantitative thresholds identified in paragraph 2 within ~~10~~ 15 working days. The failure by the undertaking providing core platform services to comply with the Commission's request pursuant to Article 19 shall not prevent the Commission from designating that undertaking as a gatekeeper based on any other information available to the Commission. Where the undertaking providing core platform services complies with the request, the Commission shall apply the procedure set out in paragraph 4." SK (Comments): Referring to our comments on the 1st compromised text, we still prefer (despite the argumentation) to extend the period to (not shorter) than **15 working days** (taking note on the comments of EC).
4. The Commission shall, without undue delay and at the latest 45 working days after receiving the complete information referred to in paragraph 3, designate the undertaking providing core platform services that meets all the thresholds of paragraph 2 as a gatekeeper, unless that undertaking, with its notification, presents sufficiently substantiated arguments to demonstrate that, in the circumstances in which the relevant core platform service operates, the undertaking exceptionally does not satisfy the requirements of paragraph 1 although it meets all the thresholds in paragraph 2.	NL (Drafting): The Commission shall, without undue delay and at the latest 45 working days after receiving the complete information referred to in paragraph 3, designate the undertaking providing core platform services that meets all the thresholds of paragraph 2 as a gatekeeper, unless that undertaking, 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 undertaking exceptionally does not satisfy the

	requirements of paragraph 1 although it meets all the thresholds in paragraph 2. NL (Comments): The NL supports clarifying the rebuttal procedure, but wonders whether removing all reference to the criteria in 3(6) aids this purpose. The proposed text was part the original text that we prefer.
Where the undertaking presents such sufficiently substantiated arguments to demonstrate that it exceptionally does not satisfy the requirements of paragraph 1 although it meets all the thresholds in paragraph 2, the Commission shall designate the undertaking as a gatekeeper, in accordance with the procedure laid down in Article 15(3), if it concludes that the undertaking was not able to demonstrate that the relevant core platform service it provides does not satisfy the requirements of paragraph 1.	NL (Drafting): **Where the undertaking presents arguments that it exeptionally does not meet the criteria in paragraph although it meets all the thresholds of paragraph 2 , , but fails to comply with the investigative measures ordered by the Commission for the purpose of assessing the undertaking's arguments in a significant manner and where the failure persists after the undertaking has been invited to comply within a reasonable time-limit and to submit observations, the Commission shall be entitled to designate that undertaking as a gatekeeper.** NL (Comments): It might be more consistent to match the formulation above, this formulation makes the sentence a lot harder to understand. We did a

	suggestion for clarity. We welcome this paragraph being moved from 3(6) to here, as this is much more clear. DE (Comments): **Question:** The wording of partially refers to the "gatekeeper", partially to the "core platform service". It is our understanding that the designation relates to the gatekeeper. Therefore, a rebuttal would have to concern the entire gatekeeper designation and not the listing of a specific core platform service according to Art. 3 (7). Is this understanding correct? ES (Drafting): Where the undertaking presents such sufficiently substantiated arguments to demonstrate that it exceptionally does not satisfy the requirements of paragraph 1 although it meets all the thresholds in paragraph 2, the Commission shall designate the undertaking as a gatekeeper, in accordance with the procedure laid down in Article 15(3), if it concludes that the undertaking was not able to demonstrate that the relevant core platform service it provides does not satisfy the requirements of paragraph

	1**taking into account paragraph 6.** ES (Comments): The new wording may create doubts on the elements/criteria that should be taken into account to assess if the requirements of paragraph 1 are met. At this point is important to reduce contestability in front of the CJEU. To this extent, the criteria of Article 3(6) should still at least be considered, using the same criteria as in the qualitative designation pursuant paragraph 6. LT (Comments): As this part was not changed, our previous concern remains valid: The legal grounds for the Cion to reject the rebuttal seems too vague ("*was not able to demonstrate* that the relevant core platform service it provides does not satisfy the requirements of paragraph 1"). LT joins other MSs asking why a reference to para 6 was deleted/how the new paragraph in question relates to para 6. In other words, the compromised text lacks clarity regarding how many and which legal grounds the Cion can use to designate a company as a gatekeeper.

Where the undertaking providing a core platform service, which satisfies the quantitative thresholds of paragraph 2 but has presented, according to this paragraph, sufficiently substantiated arguments that it does not meet the criteria in paragraph 1, fails to comply with the investigative measures ordered by the Commission for the purpose of assessing the undertaking's arguments, in a significant manner and the failure persists after the undertaking has been invited to comply within a reasonable time-limit and to submit observations, the Commission shall be entitled to designate that undertaking as a gatekeeper.	DK (Comments): We support this amendment. LT (Comments): We support an intention behind this amendment. However, LT invites the PRES to avoid legal uncertainty, which stems from the wording "<…>**in a significant manner and the failure persists after the undertaking has been invited to comply within a reasonable time-limit and to submit observations**<…>": how a phrase "**significant manner**" should be interpreted? What period is covered by the word "**reasonable time-limit**" (a week? A month?).
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~~**.** **The Commission is also empowered** to regularly adjust ~~the~~**this** methodology to market and technological developments where necessary, in particular as regards the threshold in paragraph 2, point (a).	DK (Comments): We support the amendment, since it limits the scope of delegate acts and lower the risk that essential elements of the proposal are affected. LT

	(Comments): Since the regular *adjustment* of the methodology will be done through the delegated act, we do not see the added value of the change. But we would not oppose the change. PL (Drafting): 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 a and c are** met~~, and~~**.** **The Commission is also empowered** to regularly adjust ~~the~~**this** methodology to market and technological developments where necessary PL (Comments): Article 5a refers to paragraph 2 b. .
5a. The Commission is empowered to adopt delegated acts in accordance with Article 37 to regularly adjust methodology for measuring the number of monthly active end users and yearly active business users laid down in Annex of this Regulation in view of the	NL (Comments):

technological and other developments of the core platform services.	There seems to be a significant amount of overlap between this paragraph and the former which makes us wonder if it is not better to integrate them. DK (Comments): We support this amendment, since it contributes to clarify that delegated acts can be used only to modify non-essential elements of the regulation. LU (Drafting): **5a. The Commission is empowered to adopt delegated acts in accordance with Article 37 to regularly adjust methodology for measuring the number of monthly active end users and yearly active business users laid down in Annex of this Regulation in view of the technological ~~and other~~ developments of the core platform services.** LU (Comments): The designation process shall be as clear and concise as possible. It shall provide for maximum legal certainty. These "other" developments are particularly unclear and open to interpretation, and should therefore be deleted.

	LT (Comments): We support this amendment. SK (Comments): We perceive the last wording of this par. relatively **vague and open to interpretation** concerning further developments (other than technological) of the CPCs. (in view of the comment to par. 6 (g)
6. The Commission may designate as a gatekeeper, in accordance with the procedure laid down in Article 15, any undertaking providing core platform services that meets each of the requirements of paragraph 1, but does not satisfy each of the thresholds of paragraph 2.	DE (Comments): We propose to include "total consumer time" as an additional indicator in Art. 3 (6). Assessing the total time that consumers spend in an attention platform's ecosystem might be a meaningful complementary measure to assess gatekeeper power (see: Total Consumer Time – a new approach to identifying digital gatekeepers, A report prepared by authors from Linklaters and DICE Consult as well as Martin Schallbruch, June 2021).

For that purpose, the Commission shall take into account some or all of the following elements, insofar as relevant for the undertaking under consideration:	LU (Drafting): For that purpose, the Commission shall take into account ~~some or all of~~ the following elements, insofar as relevant for the undertaking under consideration: LU (Comments): It should be clear that all of these elements need to be looked at by the Commission, otherwise this creates significant legal uncertainty. The addition "insofar as relevant for the undertaking under consideration" is sufficient to allow for the necessary flexibility depending on the company concerned.
(a) the size, including turnover and market capitalisation, operations and position of the undertaking providing core platform services;	
(b) the number of business users using the core platform service to reach end users and the number of end users;	
(c) network effects and data driven advantages, in particular in relation to the undertaking's access to and collection of personal and non-personal data or analytics capabilities;	LU (Drafting): (c) **entry barriers derived from** ~~entry barriers derived from~~ network

	effects and data driven advantages, in particular in relation to the ~~provider's~~undertaking's access to and collection of personal and non-personal data or analytics capabilities; LU (Comments): The Commission's Impact Assessment is clear that network effects on their own are not problematic. Rather, what is problematic is when they lead to barriers to entry into the market and prevent competitors from competing. This is what we should focus on rather than leave this provision so broad.
(d) scale and scope effects the undertaking benefits from, including with regard to data;	
(e) business user or end user lock-in, including switching costs and behavioural bias reducing the ability of business users and end users to switch or multi-home;	
(f) ~~other relevant business or services characteristics, such as~~ a conglomerate corporate structure or vertical integration of the undertaking providing core platform services, for instance allowing cross subsidisation or combination of data from different sources~~.~~**;**	NL (Comments): We welcome including conglomerate structures/vertical integration as a separate factor rather than together with 'other structural characteristics'

	ES (Comments): Due to the fact that 3(6) provides an open list of caracteristics, it might be better to include the reference to conglomerate corporate structure or vertical integration in the recitals.
(g) other structural business or services characteristics.	DK (Comments): We are positive about the inclusion of "other structural business or services chracteristics" as in the orginal proposal presented by the Commission. This inclusions clarifies that the qualitative designation can take place based on a non-exuastive list of criteria, thus ensuring flexibility. DE (Drafting): **(g) other ~~structural~~ relevant business or services characteristics.** LU (Drafting): ~~**(g) other structural business or services characteristics.**~~

	LU (Comments): The designation process shall be as clear and concise as possible. It shall provide for maximum legal certainty. These "other structural business or services characteristics" are particularly unclear and open to interpretation, and should therefore be deleted. IE (Drafting): **(g) other structural business or services characteristics including** the availability of equally effective ways for business users and end users to reach each other IE (Comments): The Commission initially promised the investigation under Article 3(6) would be holistic yet the compromise text does not provide for such an approach – in fact there is no longer any reference to competitive market dynamics. Article 3(6) needs to look beyond purely company dynamics to provide a holistic assessment. LT

	(Comments): We could support the amendment. SK (Comments): The addition of "other structural business or services" characteristics **is largely vague**; we understand that the "capture all clause" should delimit other possible cases regarding the market developments, however we prefer at least to some degree of framing/limitation of these characteristics.
In conducting its assessment, the Commission shall take into account foreseeable developments of these elements.	
~~Where the undertaking providing a core platform service that satisfies the quantitative thresholds of paragraph 2 but has presented, according to paragraph 4, sufficiently substantiated arguments that it does not meet criteria in paragraph 1, fails to comply with the investigative measures ordered by the Commission in a significant manner and the failure persists after the undertaking has been invited to comply within a reasonable time-limit and to submit observations, the Commission shall be entitled to designate that undertaking as a gatekeeper.~~	NL (Comments): As mentioned above, we welcome having moved this paragraph to 3(2).
Where the undertaking providing 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 undertaking has been invited to comply	FR

within a reasonable time-limit and to submit observations, the Commission shall be entitled to designate that undertaking as a gatekeeper based on facts available.	(Drafting): Where the undertaking providing 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 pursuant to articles 19, 20 and 21 or under chapter V 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. FR (Comments): This subparagraph may specify what are the "investigative measures" targeted. One can assume that it refers to measures provided in article 19 (requests for information), 20 (interviews and statements) and 21 (on-site inspections).
7. For each undertaking designated as gatekeeper pursuant to paragraph 4 or paragraph 6, the Commission shall list **in the designation decision** the relevant core platform services that are provided within that same undertaking and which individually serve as an important gateway for business users to reach end users as referred to in paragraph 1(b).	DK (Comments): We support this amendment. IE (Drafting): For each undertaking designated as gatekeeper pursuant to paragraph 4 or

	paragraph 6, the Commission shall list **in the designation decision** the relevant core platform services that are provided within that same undertaking and which individually serve as an important gateway for business users to reach end users as referred to in paragraph 1(b). For each core platform service identified, the Commission shall specify with which of the obligations outlined in Articles 5 and 6 the gatekeeper has to comply with. IE (Comments): In the interest of legal certainty, the relevant obligations for each CPS should be clearly specified. FR (Comments): French authorities wonder if this procedure which is based on cumulative quantitative criteria (i.e. the thresholds of 45 million active end users and 10,000 active business users) would lead to the exclusion of some type of core platform services covered by the regulation (in particular, online advertising services, cloud computing services and number-independent interpersonal communication services). LT (Comments):

	We support this amendment.
	ES (Drafting): **7a. (new). <u>In proceedings under paragrph 4 and paragraph 6, the Commission may decide to invite interested third parties to submit their observations in relation to the designation decision.</u>** ES (Comments): Interested parties should be allow to raise observations in the procedure of articles 3.4 and 3.6. FR (Drafting): 8. Each undertaking already designated as gatekeeper pursuant to paragraph 4 or paragraph 6 shall notify any core platform service it provides that has more than [20] million monthly active end users established or located in the Union <u>or</u> more than [10 000] yearly active business users established in the Union in the last financial year. In such circumstances, the core platform service shall be presumed to satisfy the requirement in paragraph 1(b). On this basis, the Commission shall update the list of core platform services which individually serve as an important gateway for business users to reach end users as referred to in paragraph 1(b), as provided in paragraph 7.

	Additionally, the Commission may, on its own initiative, identify core platform services as referred to in subparagraph 1, in accordance with the procedure laid down in article 15. FR (Comments): The conglomerate strategies developed by certain large companies, in a position of "gatekeeper" on one or more "core platform services", raise increased risks of unfair practices and reduced contestability on several services that may benefit from cross-supports. These strategies should therefore lead to increased vigilance over the different core platform services of a gatekeeper. In addition to the proposed amendment to Article 3(6,f), it is therefore proposed to lower the thresholds [which are to be discussed] for presumption of qualification for the gateway criterion for the core platform services of each group that has already acquired gatekeeper status. The proposed thresholds are intended to keep a relatively high level, to cover only those core platform services that have already achieved critical size.
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~~**designation decision** pursuant to paragraph 7 of this Article.	DK (Comments): We support this amendment. AT

	(Drafting): 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~~**designation decision** pursuant to paragraph 7 of this Article. **The obligation to comply with the obligations laid down in Article 6 is without prejudice to a request under Article 7 (3).** AT (Comments): As underlined also by the Commission at the WP on September 14th, the ex ante application of the obligations -also those in Art. 6 - shall not be weakened by the regulatory dialogue, especially if a gatekeeper can start a dialogue pursuant to Art. 7 (3) at any stage. Therefore, it should be clarified in Art. 3 (8) that Articles 5 and 6 are self-executing ex ante obligations, even though those in Article 6 can be further specified. LT (Comments): We support this amendment.
Article 4 Review of the status of gatekeepers	PT

	(Comments): PT agrees in general with the current draft of Article 4.
1. The Commission may upon request or its own initiative reconsider, amend or repeal at any moment a decision adopted pursuant to Article 3 for one of the following reasons:	
(a) there has been a substantial change in any of the facts on which the decision was based;	
(b) the decision was based on incomplete, incorrect or misleading information.	
2. The Commission shall regularly, and at least every ~~2~~**4** 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 core platform services of the gatekeeper which individually serve as an important gateway for business users to reach end users as referred to in Article 3(1)(b) needs to be adjusted.	FI (Comments): FI can support the proposed 4-year time period for reviewing the status of gatekeepers. DK (Comments): We support this amendment. The entrenched position enjoyed by undertakings falling under the definition of "gatekeepers" make it unlikely that significant changes can occur in a timespan of just two years. Therefore, it appears appropriate to extend the time-limit, and 4 years appears a reasonable proposal.

	In any case, the Commission will not be prevented to carry out an earlier review of the status of gatekeepers, if the circumstances so required. DE (Comments): We welcome the proposed amendment. PT (Drafting): 2. The Commission shall regularly, and at least every ~~2~~**4** years, review whether the designated gatekeepers continue to satisfy the requirements laid down in Article 3(1), or whether new undertakings providing core platform services satisfy those requirements. The regular review shall also examine whether the list of core platform services of the gatekeeper which individually serve as an important gateway for business users to reach end users as referred to in Article 3(1)(b) needs to be adjusted. PT (Comments): Amendment ensures consistency with the use of the concept of

	undertaking throughout the proposal. FR (Drafting): 2. The Commission shall regularly, and at least every **2 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 core platform services of the gatekeeper which individually serve as an important gateway for business users to reach end users as referred to in Article 3(1)(b) needs to be adjusted. FR (Comments): The French authorities are against this modification. The 2 years period is essential to ensure a continuous adaptation to the evolution of gatekeepers' activities. LT (Comments): We will not oppose this amendment. Although we do believe 2 years is optimal period, having in mind the fast developments in the digital sector.

	SK (Drafting): 2. The Commission shall regularly, and at least every **2 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 core platform services of the gatekeeper which individually serve as an important gateway for business users to reach end users as referred to in Article 3(1)(b) needs to be adjusted. SK (Comments): **In general, we do not perceive the period of 4 years (in comparison to the initial 2 years) as proportionate nor flexible enough**. We take into account the confirmation of EC´s flexibility to provide review of the designation of GKs even before this period (in view of swift change of the given circumstances), and also a possible overcharge of the EC while reviewing every 2 years. We prefer to go back to the first drafting suggestion of 2 years.

Where the Commission, on the basis of the review pursuant to the first subparagraph, finds that the facts on which the designation of the undertakings providing core platform services as gatekeepers was based, have changed, it shall adopt a decision**, in accordance with the advisory procedure referred to in Article 37a(2),** confirming, amending or repealing its previous decision designating the undertaking providing core plaforms services as a gatekeeper.	DK (Comments): We support the inclusion of the advisory committee in the context of the review of the gatekeeper's status. DE (Comments): We welcome the proposed amendment. SE (Comments): SE is hesitant to infer the advisory procedure before a decision according to this paragraph since the advisory procedure is not applied, which we support, before a decision to designate a gatekeeper according to article 3 (1). LT (Comments): We support this amendment.
3. The Commission shall publish and update a 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.	

Chapter III	
Practices of gatekeepers that limit contestability or are unfair	SK (Comments): In general, the changes made to the obligations of GK are welcomed, we support also the obligation range of art. 5 and 6. The diction of art. 5 and 6 is a lot more definite. In general, we are satisfied with the amendments done by the PRES, **however we still opt for broader distinction between the respective CPSs to avoid unintended consequences on user privacy, intellectual property or the integrity of technology and innovation** in the articles itself (or "where applicable"). In this regard, we strongly support the notion in rec. 33 that the obligations of Art. 5 and 6 and its application should take into account the nature of CPS of the GKs.
Article 5 Obligations for gatekeepers	DK (Comments): We are currently analysing the changes included in the obligations under Art.5. Therefore, we have a scrutiny reservation and may propose further adjustments at a later stage. PT (Comments):

	PT agrees in general with the current draft of Article 5. LT (Comments): We are still analysing Art. 5 and 6 (and corresponding recitals) and therefore reserve the right to provide comments and suggestions at the later stage. PL (Comments): In our opinion some issues regarding art. 5 should still be clarified. Some of the examples of obligations, listed below need further clarification.
In respect of each of its core platform services identified **in the designation decision** pursuant to Article 3(7), a gatekeeper shall:	BE (Drafting): In respect of the core platform services referred to in each provision of this article and identified **in the designation** decision pursuant to Article 3(7), a gatekeeper shall: BE (Comments):

	BE :some of these provisions do not apply to all CPS's and thus this proposal aims at clarifying this. LU (Drafting): In respect of each of its core platform services identified pursuant to Article 3(7), **taking into account of the need to protect the integrity, security, and quality of their services and the protection of personal data of end-users,** a gatekeeper shall, **where applicable**: LU (Comments): Compliance with cybersecurity, consumer protection and product safety rules means that a gatekeeper needs to make sure their services remain secure and that users continue to benefit from a safe, functioning and beneficial service. The result of the obligation should avoid any the malfunctioning of a service for the user and jeopardising their privacy. Given that there is no articulation clause on how the DMA works with other legislations, gatekeepers may be faced with conflicting obligations emanating from the DMA and other rules, such as cybersecurity or data protection. We are flexible as to where this clarification is situated in the text, eg it may also be in Article 7. Not all obligations will apply to all gatekeepers. The proposed addition "where applicable" is a clarification to that end.

	ES (Comments): SK (Drafting): In respect of each of its core platform services identified pursuant to Article 3(7), **taking into account of the need to protect the integrity, security, and quality of their services and the protection of personal data of end-users,** a gatekeeper shall, **where applicable**: SK (Comments): (In support of the LU porposal/comments) indicating, that GK must be able to ensure functionality of its services, and by that notably the security of its users (and their data).
(a) ~~refrain from combining~~**not combine** personal data sourced from any of ~~its~~**these** core platform services with personal data from any ~~other~~**further** core platform service or ~~other services~~**further 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)(a) of	FI (Comments):

Regulation (EU) 2016/679. The gatekeeper may **also** rely on the legal basis included under Article 6(1)(c), (d) and (e) of Regulation (EU) 2016/679, where applicable;	FI supports the new wording "not combine" in Art. 5(a). The prohibition is now much clearer compared to the earlier version ("refrain from combining"). DE (Drafting): a) ~~refrain from combining~~**not combine** personal data sourced from any of ~~its~~**these** core platform services with personal data from any ~~other~~**further** core platform service or ~~other services~~**further services** offered by the gatekeeper or with personal data from third-party services, refrain from requiring end users and business users to share personal data beyond what is strictly necessary for the functioning of the service 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)(a) of Regulation (EU) 2016/679. The gatekeeper may **also** rely on the legal basis included under Article 6(1)(c), (d) and (e) of Regulation (EU) 2016/679, where applicable; DE (Comments): We welcome the proposed amendments. However, in line with the

	principle of data minimisation Article 5 (a) should also oblige gatekeepers to refrain from requiring end users and business users to share data beyond what is strictly required for the functioning of the required service. As a definition for "consent" has now been added to Article 2 referring to the definition of "consent" under the GDPR, we do not understand why here and in the following Articles there is a reference to specific kinds of consent in the sense of GDPR. LU (Drafting): (a) ~~refrain from combining~~**not combine** personal data sourced from any of ~~its~~**these** core platform services with personal data from any ~~other~~**further** core platform service or ~~other services~~**further 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)(a) of Regulation (EU) 2016/679. The gatekeeper may **also** rely on the legal basis included under Article 6(1)**(b),** (c), (d) and (e) of Regulation (EU) 2016/679, where applicable; LU (Comments):

	In order to be consistent with the GDPR, it is necessary to add paragraph (b) of Article 67(1) which refers to the necessity of a performance of a contract to allow processing of personal data. The scope of the GDPR and its available legal bases shall not indirectly be narrowed by the DMA. FR (Drafting): (a) not combine personal data sourced from any of these core platform services with personal data from any ~~further~~ **other** core platform service or ~~further~~ **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)(a) of Regulation (EU) 2016/679. The gatekeeper may also rely on the legal basis included under Article 6(1)(c), (d) and (e) of Regulation (EU) 2016/679, where applicable. In the situation where the end user has been presented with the specific choice and has refused to provide consent, or has withdrawn consent, the gatekeeper shall refrain from offering different or degraded services as compared to the services offered to an end user that has provided consent, unless such consent is indispensable to ensure the same quality of service ;

	FR (Comments): For clarity and consistency ("other" is also used in the rest of the paragraph). See also article 5(f). LV (Drafting): (a) ~~refrain from combining~~**not combine** personal data sourced from any of ~~its~~**these** core platform services with personal data from any ~~other~~**further** core platform service or ~~other services~~**further 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 **of an alternative service not based on data combination** and provided consent in the sense of Article 6(1)(a) of Regulation (EU) 2016/679. The gatekeeper may **also** rely on the legal basis included under Article 6(1)(c), (d) and (e) of Regulation (EU) 2016/679, where applicable. **Where the end user has chosen a service not based on data combination, the service in question shall not differ except in the level**

	<u>of personalization resulting from the non-cumulation of personal data;</u> LV (Comments): *Gatekeepers must offer end users who do not consent to data combination an alternative service which is only different in the level of personalization resulting from the non-cumulation of data. This alternative service must otherwise be of identical quality.* PL (Comments): We would like to raise the issue of protecting consumers against online fraud. Some gatekeepers use the collected data for consumer protection activities. This issue is not regulated by the GDPR and therefore should be included in the DMA. The obligation to anonymize the data will make it impossible to use services aimed at protecting the consumer from online fraud. SK (Comments): We welcome the clarification/addition of the term "also" regarding the application of the provisions of the GDPR (that also letter. 6(1)(c), (d) and (e) of Regulation (EU) 2016/679 are applicable, where required. **In general we do not find this specification as requisite.**

(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~~**, in particular more favourable than** those offered through the online intermediation services of the gatekeeper;	NL (Drafting): (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~~**, in particular more favourable than** those offered through the online intermediation services of the gatekeeper; NL (Comments): For gatekeepers, it is reasonable to also ban narrow MFNs outright. When a gatekeeper position exists, there is very limited competition from other sales channels, implying that the benefits of freely setting prices on business users' own channels outweigh any risks of freeriding. See also: Special Advisers' Report Competition policy for the digital era, p. 57. AT (Drafting): (b) allow business users to offer the same products or services to end

	users through third party online intermediation services **or through own distribution channels** at prices or conditions that are different ~~from~~**, in particular more favourable than** those offered through the online intermediation services of the gatekeeper; AT (Comments): As already mentioned, we are in favour of extending the scope of Art. 5b to also ban narrow MFN clauses, so that business users are able to offer the product or service at different prices or conditions on their own website as well. We do not see the problem of free riding in the context of MFN clauses: In Austria we have a most favoured nation clause on booking platforms since the end of 2016. It is a narrow parity clause, also including own sales channels of accommodation providers. Recent HOTREC study has shown that the market shares of OTAs in Austria has increased from 2013 to 2019 (European Hotel Distribution Study 2020) - despite the MFN clause in force. DE (Drafting): (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~~**, in particular more favourable than**

	those offered through the online intermediation services of the gatekeeper; DE (Comments): We welcome the clarification but we also notice that this provision still only covers offering the same product/service through third party online intermediation services, but not further avenues (e.g. through a business user's own online shop). At the same time, so-called narrow parity clauses, i.e. stricter ones, have been subject to investigations in multiple jurisdictions. Against this background, we would like to propose to extent the provision accordingly. We would also like to underline that a very similar debate is currently taking place in the context of the VBER and we would like to emphasise that a prohibition in the DMA should not fall behind what will be prohibited according to the amended VBER. In addition, we are concerned that without a ban of narrow parity clauses the business users itself would not be in the position to communicate and offer services at better prices or conditions to end users acquired via the core platform service of the gatekeeper. This in turn could affect the effectiveness of Art. 5c. End users would have a lower incentive to accept direct offers by a business user if the latter could not offer them at different prices. PT (Comments): PT agrees with the current drafting of this provision. In particular, based on the experience of competition enforcement, it does not appear to be justified to impose *ex ante* on gatekeepers a prohibition covering narrow

	MFNs given evidence showing harmful effects is less clear for narrow MFNs because positive effects, e.g. avoiding free riding, are more prevalent in those cases. SE (Comments): SE supports the current scope of this obligation and does therefore not wish to include so-called "narrow" MFN-clauses in its scope. FR (Drafting): (b) allow business users to offer the same products or services to end users ~~through third party online intermediation services,~~ by any other means at prices or conditions that are different from~~, in particular more favourable than~~ those offered through the online intermediation services of the gatekeeper; FR (Comments): The wording of Article 5b prohibits broad parity clauses but allows narrow parity clauses since a gatekeeper may not prohibit a business user from offering its services at different terms and prices via another third party intermediation service but may prohibit the business user from offering its services via its own interface or direct channel at different prices or terms. This amendment is proposed in order to make sure that

	the proposal of regulation is in line with current French law. LV (Drafting): (b) allow business users to offer the same products or services to end users through third party online intermediation services **or through their own direct sales channels** at prices or conditions that are different ~~from~~**, in particular more favourable than** those offered through the online intermediation services of the gatekeeper; LV (Comments): *This Article does not require gatekeepers to allow business users to offer different prices or conditions when the business user itself directly sells the product or service online. This can reduce consumer choice or increase prices and should therefore also be covered by this Article.* LT (Comments): We find it hard to understand the meaning (including linguistic aspect) of the amendments, e.g. different *from* what? LT support a ban on the wide MFN and arguments, provided by the Cion',

	on why narrow MFN prohibition was not included in the DMA.
	FR (Drafting): (ba) refrain from requiring business users to inform the gatekeeper of the differentiated prices or conditions they choose to apply on their own channel of distribution or through third party online intermediation services. FR (Comments): Business users should not be required to inform essential platform services of the conditions or prices they charge in other distribution channels. The European Commission had already been able to rule out such practices in Case AT.40153 - Most-Favoured-Nation clauses relating to digital books and related issues.
(c) allow business users to **communicate and** promote offers including under different conditions to end users acquired via the core platform service or through other channels, 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;	FI (Comments): FI supports the inclusion of communicating to Art. 5(c). NL

	(Comments): We welcome this addition. PT (Comments): PT supports the split of Article 6(1)(c) into two paragraphs – (c) and (cc) - in order to ensure legal certainty. The amendments ensure the effectiveness of the obligation. FR (Drafting): (c) allow business users to **directly communicate** ~~**and** promote offers including under different conditions,~~ with ~~to~~ end users acquired via the core platform service service or through other channels, 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, FR (Comments): Some gatekeepers arbitrarily restrict how certain user companies communicate with their users, including marketing promotions and sharing other business information (e.g., digital music services). These restrictions prevent them from developing their products and services and

	expanding their user base. Based on the Presidency's proposal, the possibility offered to business users in Article 5(c) could therefore be further extended to simply allow direct relationships between business users and users. LT (Comments): Although we could agree with a change, we ask for more clarity on the meaning of the word "*communicate*" (to communicate at which *stage*? To communicate with a purpose to *conclude* a contract/ provide relevant information *after* the contract has been concluded). We encourage the Pres to provide at least some explanation in the corresponding recital. PL (Comments): If there is no possibility for a gatekeeper to protect himself from situation where the business and end user of a certain platform service come into contact through online intermediation services to complete the transaction outside the platform to avoid fees for that gatekeeper, maybe this provision should be transferred to art. 6 - where it would be subject to clarification - in order not to weaken the platform's initiative to develop

	online intermediation services.
(cc) 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;	DE (Comments): We would be greatful if the Commission could elaborate in detail which cases are meant here? Does this mean that a user who has e.g. acquired an e-book should be able to use it on a reading device of a gatekeeper regardless where it has been acquired? PL (Comments): We would like it to be clarified, what is to be understood as breach of this particular obligation. With the current wording one cannot have the certainty. Is it solely about the ban to use a certain software when using the gatekeeper's CPS, or does it include technical aspects of ensuring software compatibility? If it's the latter, perhaps the obligation should be moved to Art. 6. Furthermore, we belive (cc) should also include the guarantee as it's given in Art. 6c: „The gatekeeper shall not be prevented from taking **necessary and** 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, **provided that such proportionate measures are duly justified by the gatekeeper**."

	Also, we would like to point out a possibility of potential conflict with Art. 6.1.f.(the relation between those articles is unclear). We believe that is should be clarified – to avoid conflict between those articles.
(d) refrain from preventing or restricting business users **and end users** from raising ~~issues~~**any issue of non-compliance with the relevant EU or national law by the gatekeeper** with any relevant public authority, including national courts, relating to any practice of gatekeepers~~,~~**. This is** without prejudice to the right of business users and gatekeepers to lay down in their agreements the terms of use ~~including the use~~ of lawful complaint-handling mechanisms;	FI (Comments): FI sees that "refrain from" can be construed as being a suggestion instead of a clear prohibition. If the purpose of the obligation is to impose a clear prohibition on gatekeepers, it would be better to use a more strict wording to increase the clarity of the Regulation. This comment applies also in relation to similar wording used in other points of Articles 5 and 6. BE (Drafting): (d) refrain from directly or indirectly preventing or restricting business users **and end users** from raising ~~issues~~**any issue of non-compliance with the relevant EU or national law by the gatekeeper** with any relevant public authority, including national courts, relating to any practice of gatekeepers~~,~~**. This is** without prejudice to the right of business users and gatekeepers to lay down in their agreements the terms of use ~~including the use~~ of lawful complaint-handling mechanisms;

	BE (Comments): **BE** suggests this amendment for more clarification. NL (Drafting): (d) refrain from preventing or restricting business users and end users from raising issues by the gatekeeper with any relevant public authority, including national courts, relating to any practice of gatekeepers~~,~~. NL (Comments): We prefer the previous formulation. If business/end users have issues with gatekeepers that are not currently prohibited, this could be a good signal that the obligations in this Regulation need to be updated. Limiting the scope of this article to raising issues about already prohibited practices is unnecessary and does have this downside. DE (Comments): There appears to be an inherent tension between including national courts here on the one hand and on the other hand emphasising the right to implement diverging dispute settlement procedures.

	PT (Comments): PT agrees with the current draft of this provision, including the amendment, which allows alternative dispute resolution mechanisms without the effectiveness of the provision. PL (Comments): We support the general direction of this amendment. However, similarly to the newly proposed Art. 32b, it should further clarified, how the risk of potential conflicts between actions taken on a national and Union level can be dealt with – especially considering the unclear involvement of national courts.
(e) refrain from requiring business users or end users to use, and in the case of business users, also to offer or interoperate with, an identification **or payment** service of the gatekeeper in the context of services offered by the business users using the core platform services of that gatekeeper;	FI (Comments): FI is flexible concerning adding also payment services to Art. 5(e). NL (Drafting):

	(e) refrain from requiring business users or end users to use, and in the case of business users, also to offer or interoperate with, an ~~identification~~ **~~or payment~~ ancillary** service of the gatekeeper in the context of services offered by the business users using the core platform services of that gatekeeper; NL (Comments): We prefer the broader ancillary services. DK (Comments): We support the inclusion of payment services DE (Comments): We welcome the proposed amendment. PT (Comments): PT agrees with the current draft of this provision, the previous amendment reinforces freedom of users to use alternative identification services,

	which are key access points for end user data. FR (Drafting): (e) refrain from requiring business users or end users to use, and in the case of business users, also to offer or interoperate with, any ~~identification or payment~~ **ancilliary** services as defined in 2(14) and 2(15) of the gatekeeper in the context of services offered by the business users using the core platform services of that gatekeeper; FR (Comments): An identification service is defined in Article 2(15) as a type of ancillary service, defined in Article 2(14). This obligation could be extended to all ancillary services of an essential platform service of a gatekeeper, as defined in Article 2(14). Thus, other players, but not only third party payment services, would be able to develop and challenge the provision of bundles (including the core platform service and ancillary services) by gatekeepers.
	FR (Drafting): **5(X1)** refrain from requiring end users of cloud computing services identified pursuant to Article 3 to use, subscribe or interoperate with software features offered by the gatekeeper.

	FR (Comments): Add after provision 5(e) a prohibition for gatekeepers that provide cloud services to impose on their users tied offers with their own regulated cloud software and services.
(f) refrain from requiring business users or end users to subscribe to or register with any ~~other~~**further** core platform services identified pursuant to Article 3 or which meets the thresholds in Article 3(2)(b) as a condition to access, sign up or register to any of their core platform services identified pursuant to that Article;	BE (Drafting): (f) refrain from requiring business users or end users to use, subscribe to or register with any other core platform services identified pursuant to Article 3 or which meets the thresholds in Article 3(2)(b) as a condition to use, access, sign up or register to any of their core platform services identified pursuant to that Article; BE (Comments): **BE** : we suggest to add this wording taken into account the objective of this disposition is to ensure freedom of business users and/or end users to be able to use freely core platforms services without being mandated to use them being integrated with other core platform services and thus to not limit it to "subscribing" or "registering". NL (Drafting):

	(f) refrain from requiring business users or end users to subscribe to or register with any other further core platform services identified pursuant to Article 3 or which meets the thresholds in Article 3(2)(b), **or any ancillary service** as a condition to access, sign up or register to any of their core platform services identified pursuant to that Article; NL (Comments): We prefer to make this as broad applicable as possible. PT (Drafting): (f) refrain from requiring business users or end users to subscribe to or register with any ~~other~~**further** platform services as a condition to access, sign up or register to any of their core platform services identified pursuant to Article 3; PT (Comments): PT proposes to include tying relating to any other platform services, based on the experience of antitrust enforcement. FR

	(Drafting): (f) refrain from requiring business users or end users to subscribe to or register with any ~~further~~ **other** core platform services as defined in Article 2(2) ~~identified pursuant to Article 3 or which meets the thresholds in Article 3(2)(b)~~ as a condition to access, sign up or register to any of their core platform services identified pursuant to ~~that~~ Article 3; FR (Comments): This obligation limits the tying of offers between essential platform services qualified under Article 3, thereby facilitating the migration of business and end-users to other essential platform services. However, this obligation is restricted in its scope to essential platform services that meet the high thresholds of Article 3. However, in order to take into account the conglomerate strategies developed by gatekeepers and to anticipate the negative effects that may result from linked offers between certain well-established essential platform services and others that do not yet meet the thresholds but could quickly reach them through leverage effects, we propose to prohibit linked offers between essential platform services that meet the criteria of Article 3 and other essential platform services of the same gatekeeper that do not yet meet these thresholds. The obligation would then extend to all essential platform

	services of the gatekeeper.
(g) provide advertisers and publishers to which it supplies advertising services, upon their request**, free of charge** and within one month following the 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.	NL (Comments): We welcome this addition. DE (Comments): We welcome the proposed amendment. PT (Comments): PT supports the current draft of this provision, which provides legal certainty.
	DE (Drafting): 2. When the Commission pursuant to Article 3(6) designates as a gatekeeper an undertaking that does not yet enjoy an entrenched and durable position in its operations, but it is foreseeable that it will enjoy such a position in the near future, it shall declare applicable to that gatekeeper only obligations laid down in Article 5(b) and (d) without prejudice of Article 6(2). The Commission shall only declare applicable

	those obligations that are appropriate and necessary to prevent that the gatekeeper concerned achieves by unfair means an entrenched and durable position in its operations. The Commission shall review such a designation in accordance with the procedure laid down in Article 4. DE (Comments): We still believe it would be preferable to regulate the obligations of emerging gatekeepers in the context of Art. 5, 6 (for example as a para. 2 in Art. 5 or para. 3 in Art. 6). FR (Drafting): **5(X2)** Refrain from restricting, notably technically, the ability of business users to subscribe to third parties cloud computing services, in particular following a gatekeeper unilateral change of contract. In case of a unilateral change of contract, the gatekeeper shall insure that business users can retrieve and transfer the data generated through their activity without associated cost.

	5(X3) refrain from restricting or obstructing the ability of end users to use their own software license when they use the cloud computing service of the gatekeeper. FR (Comments): This obligation responds to a strong demand from cloud service customers who have expressed their need to be able to freely use cloud services, in particular with the software of their choice (see FairSoftware.Cloud proposals); these expectations are in line with the establishment of contestable and fair markets. Many undertakings using cloud services that are victims of unilateral changes of their contractual conditions with large cloud providers have expressed their concerns about this practice (see FairSoftware. Cloud proposals). In principle, these unilateral changes do not prevent undertakings from breaking their contract and migrating to another cloud solution, but in practice this solution appears to be costly and complex and enterprises are forced to accept these contractual changes that are not favorable to them. Thus, in order to maintain fairness

	in the commercial relationship between gatekeepers and their end-users, a provision could usefully be added to Article 5 to oblige gatekeeper cloud providers to ensure that end-users who are subject to unilateral changes to their contracts by the gatekeeper are able to migrate to alternative cloud solutions by transferring their data at no cost. In addition, the current 6(h) requirement will facilitate such migrations. The purpose of the amendment is to create a new obligation that allows users to freely use their licenses when using a cloud service.
Article 6 Obligations for gatekeepers susceptible of being further specified under Article 7	DK (Comments): We are currently analysing the changes included in the obligations under Art.6. Therefore, we have a scrutiny reservation and may propose further adjustments at a later stage. LT (Comments): We are still analysing Art. 5 and 6 (and corresponding recitals) and therefore reserve the right to provide comments and suggestions at the later stage.
1. In respect of each of its core platform services identified **in the designation decision** pursuant to Article 3(7), a gatekeeper shall:	BE

	(Drafting): 1. In respect of the core platform services referred to in each provision of this article and identified **in the designation decision** pursuant to Article 3(7), a gatekeeper shall: BE (Comments): **BE** some of these provisions do not apply to all CPS's and thus this is a provision for clarifying this. LU (Drafting): 1. In respect of each of its core platform services identified pursuant to Article 3(7), **taking into account of the need to protect the integrity, security, and quality of their services and the protection of personal data of end-users,** a gatekeeper shall, **where applicable**: LU (Comments): See above SK (Drafting):

	In respect of each of its core platform services identified pursuant to Article 3(7), **taking into account the need to protect the integrity, security, and quality of their services and the protection of personal data of end-users,** a gatekeeper shall, **where applicable**:
(a) refrain from using, in competition with business users, any data not publicly available, which is generated in the context of the use of the relevant core platform services **or ancillary services** by those business users, including by the end users of these business users, of its core platform services or **ancillary services or** provided by those business users of its core platform **services or ancillary** services or by the end users of these business users;	BE (Drafting): (a) refrain from using, in competition with business users, any data not publicly available, which is generated in the context of the use of the relevant core platform services **or ancillary services** by those business users or their competitors, including by the end users of these business users or their competitors, of its core platform services or **ancillary services or** provided by those business users of its core platform **services or ancillary** services or their competitors or by the end users of these business users or their competitors; BE (Comments): **BE** wonders if it is not desirable to expand this provision in order to not allow a gatekeeper to use in competition with the business users non-publicly available data it generated through the activities of other business users? We hereby think of the example where a gatekeeper marketplace could use in competition with the shoe retailer "A" non-publicly available data that was generated by the shoe retailers "B" to "Z" on the marketplace.

	NL (Comments): We welcome this addition. DE (Comments): We welcome the proposed amendment and the extension to ancillary services to prevent circumvention. LU (Drafting): (a) refrain from using, in competition with business users, any data not publicly available, which is generated in the context of the use of the relevant core platform services **~~or ancillary services~~** by those business users, including by the end users of these business users, of its core platform services or **~~ancillary services or~~** provided by those business users of its core platform **services or ancillary** services or by the end users of these business users; LU (Comments):

	Given that ancillary services will in any case be impacted by the obligations on CPS, we propose to keep the focus on the CPS and keep the scope clear and concise. The DMA aims to regulate CPS and not ancillary services (unless they qualify as CPS). PT (Comments): PT agrees that both the previous and most recent amendment are beneficial in that the former aligns the wording of the provision with that of Article 6(1)(i) and the latter avoids circumvention. FR (Comments): We welcome this proposed compromise which reflects a proposal made by the French authorities. LT (Comments): Althought we understand the rationale behind, we are still evaluating all the provisions, which refer to the ancillary services. We are concerned that the inclusion of the ancillary services might lead to the broader scope of the DMA than it was intended.

	PL (Comments): We would favour a less restrictive approach – also from end users' perspective it would be beneficial if the data was allowed to be used for non-competitive purposes (e.g. restocking). We would welcome more explanation on this point Additionally, we see a need to clarify the term ancillary services. SK (Comments): We would prefer more data about the targeted ancillary services approached by the EC. **We are not sure to support this inclusion, as it leaves room for interpretation as well as enlargement of scope of the DMA.**
(b) allow **and technically enable** end users to un-install any software applications on an operating system the gatekeeper provides or effectively controls as easily as any software application installed by the end user at any stage**, and to change default settings on an operating system that direct or steer end users to products or services offered by the gatekeeper,** 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;	NL (Drafting): Refrain from pre-installing software applications on its operating system without prejudice to the possibility for a gatekeeper to pre-install 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. End users should be offered to choose a software

	application store, search engine and web browser through a choice screen upon first using the operating system on a device. NL (Comments): The NL believes more ambition is needed in this obligation. The Impact Assessment and recitals rightfully discuss status quo bias. In light of this, merely allowing uninstalling apps seems insufficiently effective. At the same time, we understand hassle costs could be disproportionately high if a choice screen is needed for each app. We propose the following approach: - Allow pre-installing only essential, non-substitutable apps - Obligate gatekeepers to use choice screens for those apps that can be used to download other apps, such as app stores, search engines or browsers. - Users can download other apps from there. If a gatekeeper position exists for the app store, other obligations will ensure fairness and non-discrimination there. Therefore we propose a new text. DE (Comments): We welcome the proposed amendment. PT (Comments):

	PT agrees with the current draft of this provision. In particular, both the previous and most recent amendments provided more clarity and legal certainty concerning the scope of the obligation (it should cover new applications and system updates). FR (Drafting): (b) allow **and technically enable** end users to un-install any software applications on an operating system the gatekeeper provides or effectively controls as easily as any software application installed by the end user at any stage**,** refrain the gatekeeper's from exclusively enabling its own core platform services as default services when alternative services can be proposed **and to change default settings on an operating system that direct or steer end users to products or services offered by the gatekeeper,** 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; FR (Comments): The default setting allows players to strengthen their positions and take

	advantage of their conglomerate nature. It is therefore appropriate to limit as much as possible and with strong obligation the possibility for gatekeepers to install their core platform services by default, which is the purpose of the amendment. LV (Drafting): (b) allow **and technically enable** end users **and business users** to un-install any software applications on an operating system the gatekeeper provides or effectively controls as easily as any software application installed by the end user at any stage**, and to change default settings on an operating system that direct or steer end users to products or services offered by the gatekeeper,** without prejudice to the possibility for a gatekeeper to restrict such un-installation in relation to software applications **that the gatekeeper can prove** 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; LV (Comments): *The right to un-install apps should also explicitly be included for device manufacturers and device providers in order to in order to promote competition and due to the fact that consumers rarely override pre-*

	installed apps. *This Article must state that the burden of proof that any restriction on un-installation is essential must be on the gatekeeper.*
	FR (Drafting): 6(X1) allow the effective use of third party software with cloud computing 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 service provided by the gatekeeper, provided that such proportionate measures are duly justified by the gatekeeper. FR (Comments): The purpose of this obligation is to allow software competing with that owned by the gatekeepers (who provide cloud services) to compete fairly in the market; therefore, this obligation must allow the effective use of third-party software on cloud services.
(c) allow and technically enable the installation and effective use and interoperability 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 **relevant** core platform services of that gatekeeper. The gatekeeper shall not be prevented from taking **to the extent strictly** necessary and proportionate measures to	BE (Drafting): (c) allow and technically enable the installation and effective use and interoperability of third party software applications or software

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, provided that such proportionate measures are duly justified by the gatekeeper;	application stores using, or interoperating with, operating systems of that gatekeeper and allow and enable these software applications or software application stores to be accessed by means other than the **relevant** core platform services of that gatekeeper. The gatekeeper shall not be prevented from taking **to the extent strictly** necessary and 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, provided that such proportionate measures are duly justified by the gatekeeper; BE (Comments): **BE** suggests this adding. NL (Comments): We welcome the clarification. DE (Comments): We welcome the proposed amendments. LU (Drafting): (c) allow and technically enable the installation and effective use and

	interoperability 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 **relevant** core platform services of that gatekeeper~~.~~ **unless this would** ~~The gatekeeper shall not be prevented from taking~~ **to the extent strictly** ~~necessary and proportionate measures to ensure that third party software applications or software application stores do not~~ endanger **the protection of personal data,** the integrity of the hardware or operating system provided by the gatekeeper~~, provided that such proportionate measures are duly justified by the gatekeeper~~; LU (Comments): If the installation of third party apps threatens the protection of personal data, or if it poses risks to the integrity of the systems, then the obligation does not have to be implemented. Otherwise, this would be detrimental to end-users and business users alike (eg the device would stop functioning). This cannot be the result of an obligation. PT (Comments):

	PT agrees with the current draft of this provision and supports the previous and current amendments, which strengthen the wording to avoid circumvention of the obligation. SE (Drafting): (c) allow and technically enable the installation and effective use and interoperability 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 **relevant** core platform services of that gatekeeper. The gatekeeper shall not be prevented from taking **strictly** necessary and 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, provided that such proportionate measures are duly justified by the gatekeeper; SE (Comments): SE suggests a clarification of the language in this point.

	FR (Drafting): (c) allow and technically enable the installation and effective use and interoperability 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 **relevant** core platform services of that gatekeeper. The gatekeeper shall not be prevented from taking **proportionate and** **to the extent strictly** necessary ~~**and 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, provided that such proportionate measures are duly justified by the gatekeeper; FR (Comments): For clarity purpose (strictly should apply to "necessary"). LV (Drafting): (c) allow, **setting as the default, by business users and end users**,

	and technically enable the installation and effective use and interoperability 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 **relevant** core platform services of that gatekeeper. **The gatekeeper shall prompt the end user to decide whether the downloaded application or application store should become the default**. The gatekeeper shall not be prevented from taking **to the extent strictly** necessary and 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, provided that such proportionate measures are duly justified by the gatekeeper **where the gatekeeper can prove that such measures are necessary and justified and there are no less restrictive means to safeguard the integrity of the hardware or operating system**; LV (Comments): *The right to install apps, app stores and set them as the default should also explicitly be included for device manufacturers and device suppliers in order to promote competition and due to the fact that consumers rarely override pre-installed apps.*

	This Article must state that the burden of proof is on the gatekeeper to demonstrate that any measures restricting installation are necessary and justified and that there are no less restrictive means to safeguard the integrity of the hardware or operating system.
	FR (Drafting):
(d) refrain from treating more favourably in ranking services and products offered by the gatekeeper itself compared to similar services or products of third party and apply fair and non-discriminatory conditions to such ranking;	FI (Drafting): (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; FI (Comments): FI would like to retain the reference relating to any third party belonging to the same undertaking. This would clarify the text. Sometimes gatekeeper platforms are for example running both a digital distribution platform for games and a subsidiary focused on games publishing. Article 6(d) should be written in a way that the games distribution platform is not allowed to provide a more favourable ranking

	for the games published by the games publisher belonging to the same corporate group. BE (Drafting): (d) refrain from treating more favourably in ranking services and products offered by the gatekeeper itself or any third party ~~or by any third party belonging to the same undertaking~~ compared to similar services or products of third parties and apply fair and non-discriminatory conditions to such ranking; BE (Comments): **BE** wonders if it is not desirable to also cover the preferential treatment of selected third parties. See also our proposal for modification of recital 48. AT (Drafting): (d) refrain from treating more favourably in ranking services and products offered by the gatekeeper itself **or any other third party** compared to similar services or products of third party and apply fair and non-discriminatory conditions to such ranking;

	AT (Comments): We support the idea of extending the scope of Art. 6 (d) also to the preference of services and products offered by any other third party, not only be the gatekeeper itself. DE (Drafting): (d) refrain from treating more favourably in ranking, display, installation, activation, or default settings, services and products offered by the gatekeeper itself compared to similar services or products of third party and apply fair and non-discriminatory conditions to such ranking; DE (Comments): We propose to expand the scope from a self-preferencing ban to a broader non-discrimination obligation that would oblige gatekeepers to refrain from self-preferencing that relates to ranking, but also to display, installation, activation and default settings. In addition, it might be considered to widen the scope from a self-preferencing ban to a full non-discrimination obligation that would oblige gatekeepers to refrain from treating more favourably in ranking services and products offered by the gatekeeper itself or by any third party, even if that third party does not belong to the gatekeeper. The fact that a market

	participant can buy a top position on a gatekeeper's platform should be critically scrutinized. E.g. in the media sector an influence on public opinion can be bought this way. PT (Comments): PT agrees with the current draft of this provision. The previous amendment ensures consistency with the use of the concept of undertaking throughout the proposal. FR (Drafting): (d) refrain from treating differently or more favourably in ranking, installation, activation, or default settings, 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, installation, activation and default settings; FR (Comments): Beyond the ranking, self-preference situations also concern installation, activation and default settings (see amendment 6(b)). The French authorities believe that the obligation for a gatekeeper to refrain from treating more favourably services and products that are

	offered by a third party belonging to the same undertaking should be maintained. General comment: in line with the objective of achieving a flexible regulatory tool, the French authorities reserve the right to modify this obligation.
(e) refrain from technically **or otherwise** restricting the ability of end users to switch between and subscribe to different software applications and services to be accessed using the operating system of the gatekeeper, including as regards the choice of Internet access service for end users;	NL (Comments): We welcome this addition. DE (Comments): We welcome the proposed amendment. PT (Comments): PT agrees with the current drafting of this provision. The previous and current amendments provide more clarity and legal certainty. FR (Drafting): (e) refrain from technically or otherwise restricting the ability of end users

	to switch between and subscribe to different software applications and services to be accessed using the operating system or the cloud computing services of the gatekeeper, including as regards the choice of Internet access service for end users, or using its virtual assistant; FR (Comments): As stated in recital (50), "gatekeepers should not restrict or inhibit end-users' free choice by technically preventing switching or subscribing to other software applications or services. Gatekeepers should guarantee this free choice, [...] and should not create any artificial technical barriers to make switching impossible or ineffective. The French authorities believe that this obligation should explicitly apply to gatekeepers providing cloud computing services. The purpose of the amendment is therefore to extend Article 6(e) to cloud computing services in order to allow end-users to switch and subscribe to other software solutions accessible via the cloud service.
(f) allow business users and ~~providers of~~**undertakings providing** ancillary services access to and interoperability with the same operating system, hardware or software features that are available or used in the provision by the gatekeeper of any ancillary services. **In these cases, access and interoperability conditions shall be fair, reasonable and non-discriminatory.** The gatekeeper shall not be prevented from taking **to the extent strictly** necessary and proportionate measures to ensure that third party ancillary services do not endanger the integrity of the operating system, hardware or software features provided by the gatekeeper, provided that such proportionate measures are duly justified by the gatekeeper;	DE (Comments): We welcome the proposed amendment. We welcome the addition that the access and interoperability conditions shall be fair, reasonable and non-discriminatory. However, we identified that charges for access could have the effect of de facto excluding competition namely in the context of payment services provided by near-field-communication technology of devices. Specifically, in this context, we propose to clarify that these

	charges shall be limited strictly to the cost of technical operation. In order to avoid these issues, we propose to use this concrete example to specify the meaning of fair, reasonable and non-discriminatory access and interoperability conditions and to mention the charges explicitly in the Recitals. Therefore, we propose the addition as highlighted under Recital 52. PT (Comments): PT agrees with the current draft of this provision and supports the previous and current amendments, which allows for proportionate and necessary exceptions but includes wording to avoid circumvention of the obligation. SE (Drafting): (f) allow business users and ~~providers of~~ **undertakings providing** ancillary services access to and interoperability with the same operating system, hardware or software features that are available or used in the provision of any ancillary services by the gatekeeper. In these cases, access and interoperability conditions shall be fair, reasonable and non-discriminatory. The gatekeeper shall not be prevented from taking strictly necessary and proportionate measures to ensure that third party ancillary services do not endanger the integrity of the operating system, hardware

	or software features provided by the gatekeeper, provided that such proportionate measures are duly justified by the gatekeeper; SE (Comments): SE supports the addition of ancillary services to this obligation. SE also suggests a clarification of the language in this point. FR (Drafting): (f) allow business users and undertakings providing ancillary services access to and interoperability with the same operating system, hardware or software features, or other features, including near-field-communication antennas or technology related to these antennas that are available or used in the provision by the gatekeeper of any ancillary services. In these cases, access and interoperability conditions shall be fair, reasonable and non-discriminatory. The gatekeeper shall not be prevented from taking to the extent strictly necessary and proportionate measures to ensure that third party ancillary services do not endanger the integrity of the operating system, hardware or software features provided by the gatekeeper, provided that such proportionate measures are duly justified by the

	gatekeeper; FR (Comments): Interoperability is a key tool to achieve the objective of fair and contestable markets; it is therefore appropriate to extend this obligation beyond ancillary services and to promote broader interoperability within the DMA and to ensure that this interoperability takes place under FRAND conditions. The interoperability obligation should be extended to NFC antennas; this access is a strong demand from the players. The conditions for access and interoperability should be established under FRAND conditions. General comment: in line with the objective of achieving a flexible regulatory tool, the French authorities reserve the right to modify this obligation. The French authorities reserve the right to modify Article 6(f), or to insert a new obligation, which will ensure interoperability between different digital environments for dematerialized cultural works (for example, for digital books for which certain platforms impose content in a specific format). LT (Comments): We remain open to include similar safeguard to other provisions of Art 5-

	6 or as a general provision in the DMA.
(g) provide advertisers and publishers, **or third parties authorised by advertisers and publishers,** upon their request and free of charge, with access to the performance measuring tools of the gatekeeper and the information necessary for advertisers and publishers to carry out their own independent verification of the ad inventory, including aggregated data;	BE (Drafting): (g) provide advertisers and publishers, **or third parties authorised by advertisers and publishers,** upon their request and free of charge, with access to the performance measuring tools of the gatekeeper, the information necessary for advertisers and publishers to carry out their own independent verification of the ad inventory, including aggregated data and continious and real-time access via high-quality application programming interfaces to the data necessary for advertisers and publishers to run their own or third-party verification and measurement tools to measure the performance of the gatekeeper's intermediation services and the performance of an ad; BE (Comments): **BE** supports the proposal of amendment that was made by DE. DE (Drafting): (g) provide advertisers and publishers, **or third parties authorised by advertisers and publishers,** upon their request and free of charge, with access to the performance measuring tools of the gatekeeper and the

	information necessary for advertisers and publishers to carry out their own independent verification of the ad inventory, including aggregated data and continuous and real-time access via high-quality application programming interfaces to the data necessary for advertisers and publishers to run their own or third-party verification and measurement tools to measure the performance of the gatekeeper's intermediation services and the performance of an ad; DE (Comments): The idea indicated in Recital (53) to create a tool for advertisers and publishers to better verify the effects, merits, conditions and prices of the advertising intermediation services that the gatekeeper provides is welcomed. However, Article 6 (1) g) foresees a very specific intervention to improve transparency and the measurement of the performance of an advertiser and publisher. Additionally, advertisers/ publishers should be able to access data in a raw/detailed fashion so that they can use third party verification and measurement tools. Question: Under what conditions should a third party be deemed to be authorised to arrange data portability? We will further examine the implications of this amendment and comment in detail at a later stage. PT

	(Comments): PT agrees with the current draft of this provision and the previous and recent amendments, which ensure the effectiveness of the obligation. FR (Drafting): (g) provide advertisers and publishers**, or third parties authorised by advertisers and publishers**, upon their request and free of charge, with access to the performance measuring tools of the gatekeeper and the information necessary for advertisers and publishers to carry out their own independent verification of the ad inventory, including aggregated data and performance data ; FR (Comments): The French authorities welcome this proposed compromise which reflects a proposal made by the French authorities. It could however be further extended to include performance data
(h) provide end users, or third parties authorised by an end user, **upon their request and** free of charge**,** with effective portability of data generated through their activity in the context of the use of the relevant core platform services, and shall, in particular, provide free of charge tools	NL

to facilitate the effective exercise of such data portability, in line with Regulation (EU) 2016/679, including by the provision of continuous and real-time access;	(Drafting): provide end users **and business users**, or third parties authorised by an end user…. NL (Comments): We don't understand why data portability for business users was removed, as this seems to be important to ensure that switching is easily possible on both sides of the market. AT (Drafting): (h) provide end users, ~~or~~ third parties authorised by an end user **or business user upon their request and** free of charge**,** with effective portability of data generated through their activity in the context of the use of the relevant core platform services, and shall, in particular, provide free of charge tools to facilitate the effective exercise of such data portability, in line with Regulation (EU) 2016/679, including by the provision of continuous and real-time access; AT (Comments): Effective data portability is important for business users as well, especially because they are usually not covered by Art. 20 GDPR.

	Since Art. 6 (1) (i) does only cover the access and use of data, not its portability, it is necessary to ensure that there is no regulatory gap and that effective data portability is ensured for business users accordingly. DE (Drafting): (h) provide end users, or third parties authorised by an end user, **upon their request and** free of charge**,** with effective portability of data generated through their activity in the context of the use of the relevant core platform services, and shall, in particular, provide free of charge tools to facilitate the effective exercise of such data portability, ~~in line~~ without prejudice with Regulation (EU) 2016/679, including by the provision of continuous and real-time access; DE (Comments): The reference to "in line with" could be construed as limiting the data portability to the scope of Art. 20 GDPR. Question: Under what conditions should a third party be deemed to be authorised to arrange data portability? We will further examine the implications of this amendment and comment in detail at a later stage.

	PT (Comments): PT agrees with the current draft of this provision. The previous and current amendments provide more clarity and legal certainty, focusing this provision on providing data portability to end users, whereas business users are provided with access to the data under Article 6(1)(i).
(i) provide business users, or third parties authorised by a business user, **upon their request,** free of charge, with effective, high-quality, continuous and real-time access and use of aggregated or non-aggregated data, including personal data, that is provided for or generated in the context of the use of the relevant core platform services **or ancillary 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 the data are 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 Article 6 of Regulation (EU) 2016/679~~ **by giving their consent**;	FI (Comments): FI would like to hear some clarification on the reasons why "with a consent in the sense of Article 6 of Regulation (EU) 2016/679" has been removed. FI sees that such referral would improve legal certainty, since it would clarify what qualifies as a consent in the context of this obligation. NL (Comments): We welcome the addition of 'ancillary services': all data provided by business users or generated by them should be accessible to them. DE (Comments):

	We welcome the proposed amendment. PT (Comments): PT agrees with the current draft of this provision. The previous and recent amendments provide more clarity and legal certainty. SE (Comments): SE supports the addition of ancillary services in this obligation SK (Comments): Why has the legal basis of GDPR been removed (and its congruence with it)?
(j) provide to any third party ~~providers of~~**undertaking providing** online search engines, upon their request, with access on fair, reasonable and non-discriminatory terms to ranking, query, click and view data in relation to free and paid search generated by end users on online search engines of the gatekeeper, subject to anonymisation for the query, click and view data that constitutes personal data. ~~The relevant data is anonymized if personal data is irreversibly altered in such a way that information does not relate to an identified or identifiable natural person~~	FI (Comments): Removing the text from Art. 6(1)(j) ("The relevant data is anonymised if personal data is irreversibly altered in such a way that information does not relate to an identified or identifiable natural person or where personal data is rendered anonymous in such a manner that the data subject is not

~~or personal data rendered anonymous in such a manner that the data subject is not or no longer identifiable;~~	or no longer identifiable) and adding it to Recital 56 is supported by FI. Now the text in Recital 56 of the Regulation is also along the lines with Recital 26 in GDPR Regulation. NL (Comments): We understand moving the last part to the recitals but do like to underline its importance. PT (Comments): PT agrees with the current drafting of this provision. The previous and recent amendments provide more clarity and legal certainty. PL (Comments): Although we support this amendment, we would like to ask why it shall apply to the search engines only?
(k) apply fair**, reasonable** and non-discriminatory general conditions of access for business users to its software application store designated pursuant to Article 3 of this Regulation.	AT (Drafting): (k) apply fair**, reasonable** and non-discriminatory general conditions

	of access for business users to its **core platform service** ~~software application store~~ designated pursuant to Article 3 of this Regulation. AT (Comments): We think, that non-discriminatory access shall be extended to all core platform services, otherwise we see a possible loophole in the DMA. DE (Drafting): (k) apply fair**, reasonable** and non-discriminatory general conditions of access for business users to its ~~software application store~~ core platform services designated pursuant to Article 3 of this Regulation. DE (Comments): We welcome the obligation to apply fair and non-discriminatory access conditions for business users to address imbalance in commercial relationship that could lead to unfair and unjustifiably differentiated conditions to the detriment of business users and end users. However, the obligation should be expended to include all kind of designated core platform services instead of being limited to app stores. This would also be in line with the proposed American Choice and Innovation Online Act, that would foresee a general non-discrimination obligation in subsection (a)(3). Also, additional clarifications should be introduced in the recital for legal

	certainty. PT (Comments): PT agrees with the current draft of this provision. In particular, there does not appear to be sufficient evidence to extend scope of the provision beyond software application stores.
	FR (Drafting): (kbis) give access, under fair, reasonable and non-discriminatory general conditions of access for business users to its software application store designated pursuant to Article 3 of this Regulation, which propose general interest services. 6(X2) apply fair, reasonable and non-discriminatory general conditions of access for business users to cloud computing services designated pursuant to Article 3 of this Regulation; FR (Comments): The French Authorities propose to provide a right of access through the software application store of the gatekeeper to services of general interest. The services of general interest could be understood as : - the services published by the public broadcasting services, in television and radio for the exercise of their public service missions; - political and general information press services;

	- where appropriate, and in a proportionate manner, other services with regard to their contribution to the pluralistic nature of currents of thought and opinion and to cultural diversity. The pricing and contractual practices of cloud service providers are a cause for concern for European digital actors (see FairSoftware.Cloud proposals in the appendix). Given the imbalance of bargaining power between cloud service providers and business users, qualified gatekeeper providers should not be allowed to impose contractual conditions, including pricing, that would be unfair or lead to unjustified differentiation (e.g., through the granting of free offers and discounts to certain businesses).
(l) refrain from making unsubscribing from a core platform service unnecessarily difficult or complicated for business users or end users.	DE (Comments): This might be an extensive obligation with overlap to the law on unfair terms in consumer contracts and consumer protection law in general. It is unclear how the concept of "unsubscribing" relates to certain CPS (e.g. operating systems). Furthermore, it is unclear what terms and conditions are covered by "unnecessarily" and "complicated" – does it also relate to the reason for termination, the notice period, or the form? For legal certainty answers to these questions should be provided in the recitals.

	PT (Comments): PT agrees with the current draft of this provision. PL (Comments): We support this amendment, as it seems to be important for end users' rights protection, but only if the phrase "unnecessarily difficult or complicated for business users or end users" is further specified. We think this should be clarified in the recitals.
	DE (Drafting): 3. When the Commission pursuant to Article 3(6) designates as a gatekeeper undertaking that does not yet enjoy an entrenched and durable position in its operations, but it is foreseeable that it will enjoy such a position in the near future, it shall declare applicable to that gatekeeper only obligations laid down in Article Article 6(1) points (e), (f), (h) and (i) as specified in the designation decision without prejudice to Article 5 (2). The Commission shall only declare applicable those obligations that are appropriate and necessary to prevent that the gatekeeper concerned achieves by unfair means an entrenched and durable position in its operations. The Commission shall review such a designation in accordance with the procedure laid down in Article 4. DE

	(Comments): We still believe it would be preferable to regulate the obligations of emerging gatekeepers in the context of Art. 5, 6 (for example as a para. 2 in Art. 5 or para. 3 in Art. 6).
2. For the purposes of point (a) of paragraph 1 data that is not publicly available shall include any aggregated and non-aggregated data generated by business users that can be inferredfrom, or collected through the commercial activities of business users or their customers on the core platform service of the gatekeeper.	
	FR (Drafting): 3. Before implementing any change in fees or fee structure charged to business users and related to obligations pursuant paragraph 1, the gatekeeper should notice such change to the Commission and to the affected business users. FR (Comments): The implementation of certain key obligations of the DMA may lead to the payment - by the business users - of a fee to the gatekeepers. Monitoring is therefore necessary and this amendment provides for gatekeepers to inform the Commission - and their users - of changes in their charging policy.

Article 7 Compliance with obligations for gatekeepers	DK (Drafting): Article 7 Compliance with obligations for gatekeepers and regulatory dialogue DK (Comments): It appears appropriate to refes to the "regulatory dialogue" in the heading of the Article PT (Comments): PT agrees in general with the current draft of Article 7. In particular, PT welcomes the proposed changes, which provide more clarity and legal certainty, and considers the regulatory dialogue foreseen in this providsion to be a balanced and flexible procedure without jeopardising effectiveness. LT (Comments): For the LT the main issue with Art. 7 is a broad discretion for the Cion to engage in the dialogue. Therefore, we support changes, either imposing an

	obligation for the Commission to give clear *reasons* for its decision not to engage or include in the Art. clear *indications* of when such a dialogue could be initiated. SK (Comments): We are satisfied by the amendments made to art.7. **We support the changes, as it reflects our national position and it clearly introduces a better legal interpretation** of the RD processus as well as delineated the respective rights of the respective parties. **However, we still opt to support the DK proposal** in its argumentation of the RD (trigger criteria + resposibilites/decision/reasons of the EC to engage in a RD). We perceive the DK approach as more streamlined while meeting the compliance efficiencies of the obligations of GKs.
1. **The gatekeeper shall ensure and demonstrate compliance with the obligations laid down in Articles 5 and 6.** 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 applicable law, in particular Regulation (EU) 2016/679 and Directive 2002/58/EC, and with legislation on cyber security, consumer protection and product safety.	DK (Drafting): 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 applicable law, in particular Regulation (EU) 2016/679 and Directive 2002/58/EC, and with legislation on cyber security, consumer protection and product safety.

	DK (Comments): It is unclear whether the inclusion of the word "demonstrate" in the provision is capable to create a further obligation on the gatekeeper (e.g. an obligation to ensure compliance outside the context of proceedings). More generally, the amendment does not seem to provide further clarification to paragraph 1. Therefore, we do not support the amendment and propose to remove it. DE (Comments): We welcome the amendment. At the same time, we are wondering if this wording intends to reverse the burden of proof so that it is entirely on the gatekeeper to demonstrate compliance and if this would be in line with the principle of proportionality and the rule of law. LU (Drafting): 1. **The gatekeeper shall ensure and demonstrate compliance with the obligations laid down in Articles 5 and 6.** The measures implemented by the gatekeeper to ensure compliance with the obligations laid down in Articles 5 and 6 shall be **necessary for and** effective in

	achieving the objective of the relevant obligation **and the objectives of this Regulation**. The gatekeeper shall ensure that these measures **take account of the need to protect the integrity, security, and quality of their services, and** are implemented in compliance with applicable law, in particular Regulation (EU) 2016/679 and Directive 2002/58/EC, and with legislation on cyber security, consumer protection and product safety. LU (Comments): As an alternative option to our proposal in the chapeau of Articles 5 and 6, we propose to include a reference to the need for gatekeepers to consider cybersecurity concerns in Article 7(1). It is important that services remain secure and that users continue to benefit from a safe, functioning and beneficial service. LT (Comments): LT supports suggestion by other MSs to delete the first sentence. In addition to the arguments, provided by the MSs, we refer to Art 3.8, acoording to which "*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~~**designation decision** pursuant to paragraph 7 of this Article*."

2. ~~Where the~~ **The** Commission ~~finds that the measures that the gatekeeper intends to implement~~**may on its own initiative or upon request by a gatekepeer** pursuant to paragraph ~~1, or has implemented, do not ensure effective compliance with the relevant obligations laid down in Article 6, it may~~**3** open proceedings pursuant to Article 18 and by decision adopted in accordance with the advisory procedure referred to in Article 37a(2) specify the measures that the gatekeeper concerned shall implement **in order to effectively comply with the obligations laid down in Article 6**. The Commission shall adopt a decision pursuant to this paragraph within six months from the opening of proceedings pursuant to Article 18.	DK (Drafting): 2. ~~Where the~~ **The** Commission ~~finds that the measures that the gatekeeper intends to implement~~**may on its own initiative or upon request by a gatekepeer** decide to~~1, or has implemented, do not ensure effective compliance with the relevant obligations laid down in Article 6, it~~ open proceedings pursuant to Article 18 and engage in a regulatory dialogue to specify the measures that the gatekeeper shall implement in order to effectively comply with the obligations laid down in Article 6. The Commission may specify these measures by decision adopted in accordance with the advisory procedure referred to in Article 37a(2). The decision shall be adopted within six months from the opening of proceedings pursuant to Article 18. DK (Comments): We believe that the second compromise text moves the proposal in the right direction. However, we propose further amendments to provide more clarity to the provision. DE (Comments): We welcome the proposed amendments. We believe it is essential to maintain the Commission's discretion to decide about whether to engage

	in a dialogue or not.
	FR (Drafting): b) In view of adopting the decision under paragraph 2 a), the Commission may take into account the information provided by interested third parties, in accordance with Article 24a, or by governments and authorities of the Member States. FR (Comments): Consistant with the French proposal of a reporting mechanism under Article 24a.
3. **The gatekeeper may request the Commission to engage in a dialogue to determine whether the measures that the gatekeeper intends to implement or has implemented to ensure compliance with Article 6 are effective in achieving the objective of the relevant obligation in the specific circumstances.**	DK (Drafting): 3. **The** regulatory dialogue will normally be initiated where the implementation of an obligation can be affected by the presence of different business models or by the scope of application of the provision concerned. In this cases, the **gatekeeper may request the Commission to engage in a dialogue to determine whether the measures that the gatekeeper intends to implement or has implemented to ensure compliance with Article 6 are effective in achieving the objective of the relevant obligation in the specific circumstances.** DK

	(Comments): We believe it is important to ensure flexibility in the use of the regulatory dialogue, thus leaving a margin of discretion for the Commission to decide when to initiate it. This can reduce the risk of opportunistic behaviours by the gatekeepers. However, we also believe that the text should comprise some indications of when such a dialogue could be initiated. Notably, we believe that the wording adopted in our proposal (in particular, "normally") should clarify that the provision will not create obligations on the Commission. This is further clarified in the second part of the paragraph, where it is stated that the Commission "shall have discretion in deciding whether to engage in such a dialogue". AT (Comments): See text proposal Art. 3 (8). It should also be clarified - especially if a gatekeeper can start a dialogue at any stage - that this is without prejudice that Art. 6 contains self executing ex ante obligations. So it should be clear that Art. 5 & 6 are self executing obligations and this should not be weakened by the regulatory dialogue. ES (Comments):

	A recital should establish that gatekeepers might request the opening of proceedings pursuant to Article 18 from the moment the designation decision is published, to ensure legal certainty and applicability once obligations are applicable. SK (Comments): We especially welcome **a stronger legal certainty defined by the additions of par. 3.**
The Commission shall have discretion in deciding whether to engage in such a dialogue.	FI (Drafting): **The Commission shall have discretion in deciding whether to engage in such a dialogue. If the Commission decides not to engage in a dialogue, the Commission shall give clear reasons for its decision.** FI (Comments): FI suggests that for ensuring legal certainty, the Commission should give clear reasons for its decision if it decides not to engage in a dialogue. Additionally, it could be clarified in Recitals, in which cases the Commission could for instance decline from engaging into a dialogue. For

	example, when it is evident that such dialogue would be in danger to significantly hamper down the ability of the Commission to fulfil its tasks under the Regulation. DK (Comments): We support this amendment. DE (Comments): **We welcome the proposed amendments. We believe it is essential to maintain the Commission's discretion to decide about whether to engage in a dialogue or not.** LU (Drafting): **In duly justified cases, and providing the necessary reasoning, t~~T~~he Commission ~~shall have discretion in~~ may decid~~eing whether~~ not to engage in such a dialogue.** LU (Comments):

	The reasoned submission of the gatekeeper to engage in a dialogue shall not, ex officio, and without justification, be declined by the Commission. There may be cases where such a dialogue will actually result in a more effective implementation of the DMA and such dialogue should be engaged in good faith from both gatekeepers and the Commission. At the very least, the Commission needs to explain if it considers such a dialogue as not necessary. CZ (Drafting): **The Commission shall have discretion in deciding whether to engage in such a dialogue. In case the Commission decides not to engage in a dialogue, the Commission shall provide the gatekeeper with a written response containing clear reasons for its decision.** CZ (Comments): CZ suggests that for strengthening legal certainty, the Commission should give clear reasons for its decision if the Commission decides not to engage in a dialogue. Also it is important that it should be done without undue delay. PL (Drafting):

	The Commission shall engage in such a dialogue. **OR** **The Commission shall have discretion in deciding whether to engage in such a dialogue. In the event of a refusal, the Commission shall state clear and substantive reasons for the refusal and inform the gatekeeper of the measures it should implement to ensure compliance with the obligations laid down in Article 6.** PL (Comments): We sustain our reservations regarding art 7 to preserve the discretionary power of the Commission to decide whether and when to start a dialogue. Without denying the leading role of the Commission, we uphold that regulatory dialogue should be compulsory if the gatekeeper asks the Commission to engage in dialogue and not dependent on the discretion of the Commission. At the same time, we fully understand the dilema of the Commission regarding this solution. Therefore, in our opinion to prevent the abuse of this mechanism by gatekeeper countermeasures must be put in place. 1. Introducing a time limit depending on the substantive progress of such dialogue; 2. Participation of the applicant's competitors in the dialogue; 3. Review clause; 4. Limiting the scope of the dialogue to technical requirements. Alternatively, we propose that the Commission will preserve the discretionary power to decide whether and when to start a dialogue,

	however, if the Commission decides not to engage into the dialogue it will have to provide a clear and substantive explanation, plus it should inform the gatekeeper about assistance it can rely on. SK (Drafting): **The Commission shall have discretion in deciding whether to engage in such a dialogue. <u>In case the Commission decides not to engage in a regulatory dialogue, the Commission shall provide the gatekeeper with a written response containing its clear reasons for decision taken.</u>** SK (Comments): Further, we also find, that the EC shall have discretion in deciding whether to engage in a RD. If the EC decides **not to engage in a dialogue**, the EC shall give clear reasons for its decision. We find that this feedback helps to balance the powers as well as it contributes to legal certainity.
<u>A gatekeeper shall, 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</u>	DK

relevant obligation in the specific circumstances. ~~Paragraph~~	(Comments): We support this amendment.
4. In proceedings under paragraph 2, the Commission may decide to invite interested third parties to submit their observations in relation to the measures that the gatekeeper shall implement.	DK (Comments): We support the amendment. DE (Comments): **We welcome the idea to involve third parties in the regulatory dialogue. At the same time, it should be ensured that the Digital Markets Advisory Group which we propose to establish is also be informed as soon as possible and included in the consultations.**
5. Paragraphs 2 **and 3** of this Article ~~is~~**are** without prejudice to the powers of the Commission under Articles 25, 26 and 27.	DK (Comments): We support the amendment. DE (Comments):

	We consider Art. 7 (5) extremely important. It could be considered to clarify underline that all obligations of Art. 6 are – even during a regulatory dialogue – directly applicable (either in the recitals or in Art. 7 (5).
4**6**. 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 gatekeeper concerned should take in order to effectively address the preliminary findings. Interested third parties ~~shall~~**may** be ~~able~~**invited** to provide comments on ~~these~~**the main elements of the** preliminary findings **within a timeframe which is determined by the Commission**.	DK (Drafting): 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 gatekeeper concerned should take in order to effectively address the preliminary findings. Interested third parties ~~shall~~**may** be ~~able~~**invited** to provide comments on these~~these~~ preliminary findings **within a timeframe which is determined by the Commission.** DK (Comments): In our view, it is not clear what the rationale of limiting comments of interested parties to "the main elements of the preliminary findings" is, nor is it clear how these main elements can be identified. Therefore, we propose to remove reference to "the main elements". We support the other amendments introduced. DE

	(Comments): We welcome the proposed amendment. LU (Drafting): 4**6**. 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 gatekeeper concerned should take in order to effectively address the preliminary findings. Interested third parties **shall** ~~shall~~**may** be ~~able~~**invited** to provide comments on ~~these~~**the main elements of the** preliminary findings **within a timeframe which is determined by the Commission**. **The Commission shall take due account of the comments provided by third parties.** LU (Comments): Comments from interested third parties can be very useful and helpful in an effective implementation of the obligations. Often such actors have direct practical experience with gatekeepers and should be consulted. The

	Commission shall also be obliged to take such input into account.
~~5~~**7**. In specifying the measures under paragraph 2, the Commission shall ensure that the measures are effective in achieving the objectives of the relevant obligation and proportionate in the specific circumstances of the gatekeeper and the relevant service.	
~~6~~**8**. For the purposes of specifying the obligations under Article 6(1) points (j) and (k), the Commission shall also assess whether the intended or implemented measures ensure that there is no remaining imbalance of rights and obligations on business users and that the measures do not themselves confer an advantage on the gatekeeper which is disproportionate to the service provided by the gatekeeper to business users.	
~~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~~shall~~, 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. The Commission may open proceedings pursuant to Article 18 and by decision adopted in accordance with the advisory procedure referred to in Article 37a(2) specify the measures that the gatekeeper concerned shall implement. The Commission shall adopt a decision pursuant to this provision within six months from the opening of proceedings pursuant to Article 18.~~	LU (Comments): Why was this paragraph deleted?
	IE

	(Comments): For Article 7 to work effectively thereby encouraging maximum compliance – which has to be the goal of this provision – the Commission cannot retain full discretion on when to engage in dialogue. We therefore continue to fully support the proposals forwarded by Denmark which preserve the Commission's discretion to specify but also recognise in certain circumstances regulatory dialogue will be necessary in order to achieve full compliance. Furthermore, we believe for some of the examples in the latest text on Article 10(1) to work, the sequencing of Article 7 proposed by Denmark is superior to that outlined in the latest Compromise Text and if fully incorporated would develop a complete framework for regulatory dialogue
Article 8 Suspension	PT (Comments): PT agrees in general with the current draft of Article 8. In particular, PT welcomes the proposed changes, which provide more clarity and legal certainty.

1. The Commission may, acting on a reasoned request by the gatekeeper, exceptionally suspend, in whole or in part, a specific obligation laid down in Articles 5 and 6 for a core platform service identified pursuant to Article 3(7) by decision adopted in accordance with the advisory procedure referred to in Article 37a(2), where the gatekeeper demonstrates that compliance with that specific obligation would endanger, due to exceptional circumstances beyond the control of the gatekeeper, the economic viability of the operation of the gatekeeper in the Union, and only to the extent **and duration** necessary to address such threat to its viability. **In its suspension decision the Commission can specify intervals of less than one year at which the decision shall be reviewed in accordance with paragraph 2.** The Commission shall aim to adopt the suspension decision without delay and at the latest 3 months following receipt of a complete reasoned request.	FI (Drafting): 1. The Commission may, acting on a reasoned request by the gatekeeper, exceptionally suspend, in whole or in part, a specific obligation laid down in Articles 5 and 6 for a core platform service identified pursuant to Article 3(7) by decision adopted in accordance with the advisory procedure referred to in Article 37a(2), where the gatekeeper demonstrates that compliance with that specific obligation would endanger, due to exceptional circumstances beyond the control of the gatekeeper, the economic viability of the operation of the gatekeeper in the Union, and only to the extent **and duration** necessary to address such threat to its viability. **In its suspension decision the Commission can specify intervals of less than one year at which the decision shall be reviewed in accordance with paragraph 2.** The Commission shall aim to adopt the suspension decision without delay and at the latest 3 months following receipt of a complete reasoned request. **The suspension is without prejudice to the obligations laid down in Regulation (EU) 2016/679 and Directive 2002/58/EC.** FI (Comments): It would be important to clarify in the Article 8 that the suspension power of the Commission does not give the Commission the right to circumvent the GDPR, which in turn could result in weaker protection of data. This could be achieved through adding a clarification to the Article 8(1). FI is also flexible concerning adding such clarification to the corresponding recitals. ("The suspension is without prejudice to the obligations laid down in Regulation (EU) 2016/679 and Directive 2002/58/EC").

	NL (Comments): We support this addition. DK (Comments): We support the amendments. DE (Comments): We welcome the proposed amendments. LT (Comments): We support the amendments.
2. Where the suspension is granted pursuant to paragraph 1, the Commission shall review its suspension decision **at least** every year. Following such a review the Commission shall either wholly or partially lift the suspension or decide that the conditions of paragraph 1 continue to be met.	NL (Comments): We support this addition. DK

	(Comments): We support the amendment. LT (Comments): We support the amendment.
3. 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.	
In assessing the request, the Commission shall take into account, in particular, the impact of the compliance with the specific obligation on the economic viability of the operation of the gatekeeper in the Union as well as on third parties. The suspension may be made subject to conditions and obligations to be defined by the Commission in order to ensure a fair balance between these interests and the objectives of this Regulation. Such a request may be made and granted at any time pending the assessment of the Commission pursuant to paragraph 1.	
Article 9 Exemption on grounds of public morality, public health and public security	PT (Comments): PT agrees in general with the current draft of Article 9. In particular, PT welcomes the proposed changes, which provide more clarity and legal

	certainty. ES (Drafting): Article 9 Exemption ~~on grounds of public morality, public health and public security~~**for overriding reasons of public interest.**
1. The Commission may, acting on a reasoned request by a gatekeeper or on its own initiative, by decision adopted in accordance with the advisory procedure referred to in Article 37a(2), exempt it, in whole or in part, from a specific obligation laid down in Articles 5 and 6 in relation to an individual core platform service identified pursuant to Article 3(7), where such exemption is justified on the grounds set out in paragraph 2 of this Article. The Commission shall adopt the exemption decision **without delay and** at the latest 3 months after receiving a complete reasoned request.	DK (Comments): We support the amendment. LT (Comments): We support the amendment.
1a. Where an exemption is granted pursuant to paragraph 1, the Commission shall review its exemption decision ~~every 2 years.~~**if the ground for the exemption no longer exists or at least every year.** Following such a review the Commission shall either wholly or partially lift the exemption or decide that the conditions of paragraph 1 continue to be met.	NL (Comments): We welcome this addition. DK

	(Comments): We support the amendment. LT (Comments): We support the amendment.
2. An exemption pursuant to paragraph 1 may only be granted on grounds of:	
	SK (Comments): We prefer to the term that of **public policy (unify the wording with that of the of the E-commerce Directive (art. 3))**
(a) public morality;	NL (Comments): These exemptions remain a bit vague, since they are not legal definitions. ES (Drafting): (a) **public policy** ~~public morality;~~

	ES (Comments): It would be better referring to "public policy" instead of "public morality" what would be consistent with some related regulation as the E-commmerce Directive. SK (Drafting): public ~~morality~~ policy
(b) public health;	
(c) public security.	
3. 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.	
In assessing the request, the Commission shall take into account, in particular, the impact of the compliance with the specific obligation on the grounds in paragraph 2 as well as the effects on the gatekeeper concerned and on third parties. The suspension may be made subject to conditions and obligations to be defined by the Commission in order to ensure a fair balance between the goals pursued by the grounds in paragraph 2 and the objectives of this Regulation. Such a request may be made and granted at any time pending the assessment of the Commission pursuant to	

paragraph 1.	
Article 9a Reporting mechanism	PT (Comments): PT agrees in general with the current draft of Article 9a.
1. Within six months after its designation pursuant to Article 3, and in application of Article 3(8), the gatekeeper ~~provides~~**shall provide** the Commission with a report describing in a detailed and transparent manner the measures **it has** implemented**,** to ensure compliance with the obligations laid down in Articles 5 and 6. This report shall be updated at least annually.	DK (Comments): We support the amendments. ES (Drafting): 1. Within six months after its designation pursuant to Article 3, and in application of Article 3(8), the gatekeeper shall provide the Commission with a report describing in a detailed, **comprehensible** and transparent manner the measures it has implemented, to ensure compliance with the obligations laid down in Articles 5 and 6. This report shall be updated at least annually. ES (Comments):

	It is not clear whether the aim is to facilitate the monitoring and control of the Commission or if it just to improve the information to third parties. Provided that both aims would be relevant in term of an efficient implementation of the DMA, it would be strongly advisable to: a) Include a reference to this report in Article 7.1. b) Refer the transparency obligation to a summary (intended for the common public) and a non-confidential version of the report that was sent to the COM (intended for technical consultation). c) Create a single structured channel to systematically publish the public information and data referred to the DMA, as a transparency tool (see ES proposal on Article 34). LT (Comments): We thank the Pres for amendments made in recital 58a. However, we maintain our position that transparency reports, including public, should be *objectively* necessary for achieving concrete goals and there should be evidence that the addressees will use these reports. SK (Comments): We consider this art. still as being disproportionate regarding the **overall administrative burden of GKs** (out of the DMA).

2. Within six months after its designation pursuant to Article 3, the gatekeeper shall publish and provide the Commission with a nonconfidential summary of the report referred to in paragraph 1 of this Article. The Commission shall publish without delay the nonconfidential summary of the report. This non-confidential summary shall be updated once the report referred to in paragraph 1 of this Article is updated.	ES (Drafting): 2. Within six months after its designation pursuant to Article 3, the gatekeeper shall publish and provide the Commission with a **summary and a** nonconfidential ~~summary~~ **version** of the report referred to in paragraph 1 of this Article. **The summary shall understandably describe the implications of the adopted actions for the business and end users of the Core Platform Service.** The Commission shall publish without delay the **summary and the** nonconfidential ~~summary~~ **version** of the report. **This information shall be** ~~non-confidential summary shall be~~ updated once the report referred to in paragraph 1 of this Article is updated.
Article 10 Updating obligations for gatekeepers	PT (Comments): PT agrees in general with the current draft of Article 10. It is important to find a future-proof solution ensuring that it will be possible to adapt the DMA to further developments in a flexible manner. PT considers however that the Commmission should not be able impose measures which have no support in pre-defined obligations (see FR proposal) as that would constitute a change of paradigm.

	CZ (Comments): CZ would like to consider further changes in this Article, to maintain better balance between the possibility of updating obligations and the goal of DMA. PL (Comments): PL supports the new proposal of Art. 10 as a well-balanced solution that adequately defines the situations in which the Commission is empowered to issue delegated acts supplementing the obligations. SK (Comments): In general, we support the alternations made to the wording, we welcome that the proposal highlights certain limits to the scope of the delegated acts (to categories- ancillary services, data, behaviour of GK). However, we still perceive an **insufficient level of precision** – as per the degree of legal clarity ("specifying of the manner", "certain"). In general, **we support narrowing the scope of delegated acts to the extend necessary to find a balance to achieve a certain** (effective in its core) **level of future-proofness of the DMA**.

1. The Commission is empowered to adopt delegated acts in accordance with Article 37 to supplement **~~or amend~~** the **existing** obligations laid down in Articles 5 and 6 **~~where, on~~.** **This supplementing of** the **~~basis of~~existing obligations shall be based on** a market investigation pursuant to Article 17, **~~it~~which** has identified the need to update those obligations to address practices that limit the contestability of core platform services or that are unfair in the same way as the practices addressed by the obligations laid down in Articles 5 and 6.	BE (Comments): **BE** can express its support for the article 10 and the future proofing of the DMA via delegated acts. However BE is of the opinion that the directly applicable obligations in Art. 5 & 6 of the DMA should be complemented with a principles based approach that allows the EC to implement tailor-made remedies. This is pivotal for improving the effectiveness of the DMA and to make it future proof. In view of the rapid technical evolutions in this sector, it can be expected that soon after the adaptation of the DMA, there may be new and unforeseen practices or issues that the obligations in art. 5 and 6 do not tackle. The COM should have the power to adjust its intervention quickly to these new developments. We fear that the article 10 process could take too long and may be overly restrictive. We thus support the amendment made by FR, NL and DE for a new article 16a which provides tailor-made remedies. DK (Drafting): The Commission is empowered to adopt delegated acts in accordance with Article 37 to supplement **~~or amend~~** the **existing** obligations laid down in

	Articles 5 and 6 ~~where, on~~**.** The adoption of delegated acts to supplement ~~**basis of**~~**existing obligations shall be based on** a market investigation pursuant to Article 17, ~~it~~**which** has identified the need to update those obligations to address practices that limit the contestability of core platform services or that are unfair in the same way as the practices addressed by the obligations laid down in Articles 5 and 6. DK (Comments): We propose a variation in the wording adopted in the provision to increase its clarity. DE (Comments): We welcome the proposed specifications in Art. 10 (1). IE (Drafting): The Commission is empowered to adopt delegated acts in accordance with Article 37 to supplement ~~**or amend**~~ the **existing** obligations laid down in Articles 5 and 6 ~~where, on~~**. This supplementing of** the ~~**basis of**~~**existing obligations shall be based on the findings of** a market investigation

	pursuant to Article 17, ~~it~~**which** has identified the need to update those obligations to address practices that limit the contestability of core platform services or that are unfair in the same way as the practices addressed by the obligations laid down in Articles 5 and 6. IE (Comments): The link between Articles 10 and 17 needs to be strengthened to say the delegated act will be based on the findings of an Article 17 investigation.
~~A~~**The scope of a** delegated act ~~**which supplements the obligations**~~**adopted** in accordance with the first subparagraph shall be limited to:	DK (Comments): We are still evaluating whether we can support all the specifications included in Art.10 para.1. Therefore, we will provide further comments on this aspect at a later stage. LT (Comments): LT is still scrutinizing the amendments made to Art 10 as some

	conditions, provided in the Art 10.1 para 2, could, in our view, unintentionally change the scope of the DMA. The most concerning aspects: **point a), d)** (because the DMA provides a non-exhaustive list of services, which can constitute ancillary services) and **g).**
~~**the extension of**~~ **extending** an obligation that applies only **in relation** to certain core platform services, to other core platform services listed in Article 2 point (2);	FI (Drafting): **COMMENT** FI (Comments): There might be a need to limit the possibility to extend the obligations to other core platforms services. Finland sees that extensions to other core platform services listed in Article 2 point (2) could be seen as significant change to the Regulation. Maybe this could be solved by listing those obligations in this point, where extension could be possible in the future. FI considers that extending obligations that applies only in relation to certain core platform services, to other core platform services listed in Art. 2 (2), is in risk of changing the essential content of the Regulation. Hence, in such case, it would not be possible to be changed under delegated acts by the Comission, but it would need an amendment of the Regulation by itself.

~~**the extension of**~~**extending** an obligation ~~**where it identifies a**~~**that benefits a certain** subset of business users or end users ~~**as beneficiaries, to**~~**so that it benefits** other subsets of business users or end users ~~**as beneficiaries; and;**~~	
~~**the specification of**~~**specifying** the manner in which the obligations of gatekeepers under Articles 5 and 6 are to be performed ~~**with a view to improving the effectiveness of the application of**~~ **in order to ensure effective compliance with** those obligations ~~**and preventing their circumvention**~~;	
~~**[(d) …]**~~	
~~**A delegated act which amends the obligations in accordance with the first subparagraph shall be limited to the amendment of […]**~~	
extending an obligation that applies only in relation to certain ancillary services to apply in relation to other ancillary services defined in Article 2 point (14);	NL (Comments): We think these find a good balance between what is legally possible to do by delegated act and what can be foreseen to be necessary when it comes to supplementing obligations.

	At the same time, the limitations of future-proofing the DMA by means of delegated acts are even more clear now. The DMA should not be too backward-looking. Therefore, an additional article is needed for future-proofness and to be able to quickly intervene on practices that limit contestability and fairness before they become commonly applied by all gatekeepers. See drafting suggestion article 16a for this new article. LU (Drafting): ~~extending an obligation that applies only in relation to certain ancillary services to apply in relation to other ancillary services defined in Article 2 point (14);~~ LU (Comments): In this paragraph, we directly regulate ancillary services which may not have a negative impact on competition. Ancillary services may even contribute to more competition in certain digital markets. The DMA aims to regulate CPS and not ancillary services (unless they qualify as CPS). Therefore we propose to stick to a clear and concise scope.
extending an obligation that applies only in relation to certain types of data to apply in relation to other types of data;	

adding further conditions where an obligation imposes certain conditions on the behaviour of a gatekeeper; or	
extending an obligation that governs the relation between several core platform services of the gatekeeper to the relation between a core platform service and other services of the gatekeeper.	FI (Drafting): **Suggestion for removal of the paragraph** FI (Comments): FI considers that extending obligations from core platform services to other services is widening the scope of the Regulation too far away from its original purpose, i.e. reglulating the CPSs. Hence, FI suggests the removal of Art. 10(1)(g). IE (Comments): *We welcome CLS commitment here to improving the wording* SK

	(Drafting): ~~**extending an obligation that governs the relation between several core platform services of the gatekeeper to the relation between a core platform service and other services of the gatekeeper.**~~ SK (Comments): This par. seems to intervene more unporportionaly regarding the amendments of non-essential elements of the Regulation, while intervening in the scope of this Regulation itself. **We support the deletion of this par.** (in support of FI).
2. A practice as referred to in paragraph 1 shall be considered to be unfair or to limit the contestability of core platform services where:	DE (Comments): We are very concerned about this attempt at defining "contestability", which we believe is a pivotal aspect as it could give rise to an interpretation of all obligations in light of this concept (due to the DMA aiming at contestable CPS in general). In particular, we consider the requirements of causality ("due to", "thus") problematic SK

	(Comments): In general, we prefer a clearer wording of this art. as per CLS interpretation.
(a) there is an imbalance between the rights and obligations of business users and the gatekeeper obtains an advantage from business users that is disproportionate to the service provided by that gatekeeper to those business users; or	AT (Drafting): (a) there is an imbalance between the rights and obligations of business users and the gatekeeper obtains an advantage ~~from business users~~ that is disproportionate to the service provided by that gatekeeper to those business users; or AT (Comments): When defining "unfair" and "limit contestability" in Art. 10 (2) it should be carefully done in order to avoid a too narrow definition. We therefore propose to delete the phrase "from business users" in Article 10 (2) (a), so that every advantage of the gatekeeper is covered. LV (Drafting): a) there is an imbalance between the rights and obligations of business users **or end users** and the gatekeeper obtains an advantage from

	business users **or end users** that is disproportionate to the service provided by that gatekeeper to those business users **or end users**; or LV (Comments): *A practice can be unfair or limit the contestability of core platform services where there is an imbalance between the rights and obligations of end users and gatekeepers as well as business users and gatekeepers. The Commission must also be empowered to update the obligations in Articles 5 and 6 in the case of an imbalance between the rights and obligations of end users and gatekeepers.*
(b) it is engaged in by gatekeepers and **is capable of impeding innovation and limiting choice for business users and end users because it:**	DK (Drafting): (b) it is engaged in by gatekeepers and**:** DK (Comments): The amendments proposed to this provision do not appear capable to provide more clarity on the notion of contestability. For instance, it is not clear whether "impeding innovation" and "limiting choice for business users and end users" are considered as cumulative conditions. Therefore, we propose to delete these amendments.

	LT (Drafting): (
affects or risks affecting the contestability of a core platform service or other services in the digital sector on a lasting basis due to the creation or strengthening of barriers for other ~~**operators**~~**undertakings** to enter or expand as suppliers of a core platform service or other services in the digital sector**;** or ~~**prevents other operators from having the same access to a key input as the gatekeeper, and it is thus capable of impeding innovation and limiting choice for business users and end users.**~~	DE (Comments): We welcome the deletion of the last part of the sentence.
prevents other operators from having the same access to a key input as the gatekeeper.	NL (Comments): We welcome the improved clarity. DK (Drafting): **prevents other undertakings from having the same access to a key input as the gatekeeper.** DK (Comments):

	The provision above modifies "operator" with "undertaking". The same adjustment should be included also in the present provision. SE (Drafting): prevents other undertakings from having the same access to a key input as the gatekeeper. SE (Comments): SE suggests changing "operators" to "undertakings" in line with the change made in point (i) above.
Article 11 Anti-circumvention	PT (Comments): PT agrees in general with the current draft of Article 11. LT (Comments): We could support the amendment.

1a. An undertaking providing core platform services shall not fragment these services through contractual, commercial, technical or any other means to circumvent the quantitative thresholds laid down in Article 3(2).	NL (Comments): We welcome this addition. DK (Comments): We support the amendment, since it can prove effective in preventing circumvention in the designation process. DE (Comments): We welcome the proposed amendment.
1b. The Commission may, when suspecting that undertaking providing core platform services engaged in practice laid down in paragraph 1, require such undertaking for any information that it deems necessary to determine whether the undertaking concerned engaged in fragmentation of core platform services within the meaning of paragraph 1.	DK (Drafting): **1b. When suspecting that an undertaking providing core platform services engaged in practices laid down in paragraph 1, the Commission may, , require such undertaking to provide any information that it deems necessary to determine whether the undertaking concerned engaged in fragmentation of core platform services within the meaning of paragraph 1.** DK

	(Comments): We support the intent and the content of the amendment. Our amendment suggestions are just to further enhance its clarity.
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~~**listed** pursuant to Article 3(7), their implementation shall not be undermined by any behaviour of the gatekeeper, regardless of whether this behaviour is of a contractual, commercial, technical or any other nature~~.~~**, including the use of behavioural techniques or interface design that would undermine the effectiveness of Articles 5 and 6.**	NL (Comments): We welcome this important clarification. DK (Drafting): 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~~**listed** pursuant to Article 3(7), their implementation shall not be undermined by any behaviour of the gatekeeper, regardless of whether this behaviour relates to its core platform services, and whether it is of a contractual, commercial, technical or any other nature~~.~~**. This shall include the use of behavioural techniques or interface design that would undermine the effectiveness of Articles 5 and 6.** DK

	(Comments): We support the proposed amendment. However, we believe that the provision can be further clarified, especially specifying that the anti-circumvention clause relates to all behaviours, regardless of whether they relate to the gatekeeper's CPSs. DE (Drafting): 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~~**listed** pursuant to Article 3(7), their implementation shall not be undermined by any behaviour of the gatekeeper, regardless of whether this behaviour is of a contractual, commercial, technical or any other nature~~.~~**, including the use of dark patterns, like the use of behavioural techniques or interface design that would undermine the effectiveness of Articles 5 and 6.** DE (Comments): **We welcome the proposed amendments. However, as the recital explicitly refers to "dark patterns", we would like to propose to also**

	mention this term in Art. 11 itself. **Furthermore, it should be clarified at least in the recitals that circumvention practices do not require intent on the side of the gatekeeper to cover novel forms of generating online interfaces, e.g. via the use of AI and Machine Learning.** LV (Drafting): 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~~**listed** pursuant to Article 3(7), their implementation shall not be undermined by any behaviour of the gatekeeper, regardless of whether this behaviour is of a contractual, commercial, technical or any other nature~~.~~**, including including through product design or by presenting end user choices in a non-neutral manner, or by otherwise subverting or impairing user autonomy, decision-making, or choice via the structure, function or manner of operation of a user interface or a part thereof and the use of other behavioural techniques or interface design that would undermine the effectiveness of Articles 5 and 6.**

	LV (Comments): *Gatekeepers have spent lots of resources on optimizing interface design and other choice architecture techniques to influence how consumers behave.* *It is therefore essential to explicitly prohibit the use of techniques that use carefully designed choice architecture which lead consumers them to take actions in the interests of the gatekeeper rather than in their own interests.*
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.	FR (Drafting): 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, **and** 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. FR (Comments):

	As suggested by the European Data Protection Supervisor in his opinion published on 10 February 2021, for further clarification of the article.
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.	LV (Drafting): 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**, <u>including by presenting end-user choices in a non-neutral manner, or by otherwise subverting or impairing user autonomy, decision-making, or choice via the structure, function or manner of operation of a user interface or a part thereof</u>**.
Article 12 Obligation to inform about concentrations	DE (Drafting): **<u>German text proposal (should replace the current text proposal):</u>** Obligation to notify and inform about concentrations 1. A gatekeeper shall notify to the Commission any concentration within the meaning of Article 3 of Regulation (EC) No 139/2004 if the following

	conditions are met: a) the target undertaking is a provider of core platform services or of any other services provided in the digital sector and as such has substantial operations in at least one of the Member States; and b) the Community-wide turnover of the target undertaking in the last business year preceding the concentration is more than EUR 5 million; and c) the consideration for the acquisition exceeds EUR 1 billion. The concentration shall not be implemented until it has been declared compatible with the common market pursuant to a decision under Articles 6(1)(b), 8(1) or 8(2), or on the basis of a presumption according to Article 10(6) of Regulation (EC) No 139/2004. 2. Concentrations within the scope of paragraph 1 shall be appraised under Regulation (EC) No 139/2004. The Commission shall declare a concentration incompatible with the common market as it significantly impedes effective competition, if there is a realistic prospect of a significant impediment to effective competition. 3. Irrespective of paragraph 1, 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. A gatekeeper shall inform the Commission of such a concentration prior to its implementation and following the conclusion of the agreement, the announcement of the public bid, or the acquisition of a controlling interest. The information shall also describe for the acquisition targets, for any relevant core platform services their respective EEA annual turnover, their number of yearly active business users and the number of monthly active end users, as well as the rationale of the intended concentration.

	4. If, following any concentration as provided in paragraph 1, additional core platform services individually satisfy the thresholds in point (b) of Article 3(2), the gatekeeper concerned shall inform the Commission thereof before the implementation of the concentration and provide the Commission with the information referred to in Article 3(2). DE (Comments): **Especially in digital markets innovative undertakings with highly competitive potential often do not generate high turnover in the first years after their market entry, since successful business is linked to other figures (i.e. user numbers ("monthly active users", "daily active users") or the access frequency of a website ("unique visitors")). Yet, incumbents are willing to pay high consideration for such innovative start-ups. The contestability of the digital markets can severely suffer if gatekeepers' acquisitions of innovative competitors are not subject to merger control and therefore can be consummated without restrictions.** **The first criterion defining the scope of the notification obligation is that of "substantial operations in at least one of the Member States" as it guarantees the necessary local nexus of the concentration. Secondly, a Community-wide turnover of the target undertaking in the last business year preceding the concentration of more than EUR 5 million exempts acquisitions of undertakings with minor economic and competitive significance. As a third criterion the transaction value can serve as proxy to estimate the target's competitive potential in the eyes of the acquiring gatekeeper. A threshold of EUR 1 billion for the consideration for the acquisition appears to be a transaction value which is high enough to cover economically important cases while at the same time keeping the notification burden for less**

	significant concentrations at bay. A threshold of EUR 1 billion has also been taken as a basis to identify possible "gap cases" in the European Commission's evaluation of procedural and jurisdictional aspects of EU merger control (Staff working paper, published 26 March 2021). **Another important component in effectively addressing cases of potentially predatory acquisitions is the adaptation of the substantive test. While the established concept of significant impediment of effective competition (SIEC) shall remain untouched, an intervention by the European Commission in concentrations as defined above shall already be possible at the "realistic prospect" of an SIEC. This lowers the burden of proof for the European Commission but prevents discretionary decisions. Accordingly, it does not unduly afflict the legal position of the affected gatekeepers whose market position as such justifies constraints under the DMA. While this leads to a selective alteration with regard to the existing merger control regime under Regulation (EC) No 139/2004 for certain acquisitions by gatekeepers, merger control under Regulation (EC) No 139/2004 as such is meant to remain unaffected. Quite the contrary, the DMA-provision - as proposed - expressly refers to Regulation (EC) No 139/2004, since any kind of double or parallel merger control regimes at EU level must be avoided at all cost.** **At the same time, the information obligation with regard to non-notifiable mergers of gatekeepers with another provider of core platform services or of any other services provided in the digital sector - as proposed in the DMA - ought to be maintained in order to allow a full monitoring of the contestability of the digital markets.** **In any case, an amendment of Article 12 should not alter the legislative procedure and voting rules for the adoption of the DMA. On the question of the legal basis we refer to the opinion of**

	Franck/Monti/de Streel. PT (Comments): PT agrees in general with the current drafting of Article 12. LT (Comments): We support the amendment. We would not support further changes/expansion of the provision, including those that would go against the legal ground of the DMA. SK (Comments): We support the wording of art. 12, **we do not opt for further strenghtening of the wording (toward/on killer acquisitions).**
1. A gatekeeper shall inform the Commission of any intended concentration within the meaning of Article 3 of Regulation (EC) No 139/2004 involving another gatekeeper, ~~provider of~~**undertaking providing** 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.	BE (Comments): **BE** supports the changes that were made to article 12. NL

	(Drafting): 1. A gatekeeper shall inform the Commission of any intended concentration within the meaning of Article 3 of Regulation (EC) No 139/2004 involving another gatekeeper, undertaking providing 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. DK (Comments): We support the amendment. FR (Drafting): 1. A gatekeeper shall inform the Commission, of any intended concentration within the meaning of Article 3 of Regulation (EC) No 139/2004 ~~involving another gatekeeper undertaking providing 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. FR (Comments): It is suggested that the information obligation should apply to any proposed concentration of the gatekeepers. This would reduce the difficulty for both the regulated players and the Commission to determine which transactions would effectively fall within the digital sector. Furthermore, at a time when the activities and expansion strategies of the players under consideration may not be strictly limited to the "digital" sector and their market power may extend through digital and non-digital channels, restricting the obligation to provide information to the "digital sector" may appear to be unsustainable and contribute to weakening the interest of the suggested obligation.
A gatekeeper shall inform the Commission of such a concentration at least two months prior to its implementation and following the conclusion of the agreement, the announcement of the public bid, or the acquisition of a controlling interest.	PT (Comments): PT supports specifying a time-limit for complying with the obligation to inform about concentrations to provide more clarity and legal certainty.
2. The ~~notification~~ **information by the gatekeeper** pursuant to paragraph 1 shall at least describe the ~~parties to~~**undertakings concerned**	NL

by the concentration, their EEA and worldwide annual turnover, their field of activity, including activities directly related to the concentration, the transaction value or an estimation thereof, a summary of the concentration, including its nature and rationale, as well as a list of the Member States concerned by the operation.	(Comments): We agree this is a better choice of words to avoid confusion with notification in the sense of the merger regulation. DK (Comments): We support the amendment, since it contributes to clarify the provision. LU (Drafting): 2. The ~~notification~~ **information by the gatekeeper** pursuant to paragraph 1 shall at least describe the ~~parties to~~**undertakings concerned by** the concentration, their EEA and worldwide annual turnover, ~~**their field of activity,**~~ including activities directly related to the concentration, the transaction value or an estimation thereof, a summary of the concentration, including its nature and rationale, as well as a list of the Member States concerned by the operation. LU (Comments): The field of activity has to be the digital sector, given the scope of the DMA. Adding this could suggest there to be a broader field of activity,

	beyond digital markets. The exact activities seem to be most relevant in this notification. PT (Comments): PT supports the current draft, which provides the necessary clarity and legal certainty. SE (Comments): SE welcome the amendment. A suggestion from SE though, is to add a reference to regulation 139/2004 or define the concept of "undertakings concerned" either in article 2 or in recital 31.
~~The notification~~**The information by the gatekeeper** shall also describe, for any relevant core platform services, their respective EEA annual turnover, their number of yearly active business users and the number of monthly active end users~~, as well as the rationale of the intended concentration~~.	NL (Drafting): …. their number of yearly active business users and the number of monthly active end users**, as well as the rationale of the intended concentration.** NL (Comments):

	We think this is actually very important information and should be kept in. DK (Drafting): ~~The notification~~**The information provided by the gatekeeper** shall also describe, for any relevant core platform services, their respective EEA annual turnover, their number of yearly active business users and the number of monthly active end users~~, as well as the rationale of the intended concentration~~. DK (Comments): We support the changes proposed and suggest a minor adjustment.
3. If, following any concentration as provided in paragraph 1, additional core platform services individually satisfy the thresholds in point (b) of Article 3(2), the gatekeeper concerned shall inform the Commission thereof within three months from the implementation of the concentration and provide the Commission with the information referred to in Article 3(2).	
4. The Commission shall inform the Member States of any ~~notification~~ **information** received pursuant to paragraph 1 and publish a summary of the concentration, specifying the parties to the concentration, their field of activity, the nature of the concentration and the list of the Member States concerned by the operation. The Commission shall take	DK (Comments):

account of the legitimate interest of undertakings in the protection of their business secrets.	We support the proposed amendment. PT (Drafting): 4. The Commission shall without delay inform the Member States, including at least the respective national competition authorities, of any ~~notification~~ **information** received pursuant to paragraph 1 and publish a summary of the concentration, specifying the parties to the concentration, their field of activity, the nature of the concentration and the list of the Member States concerned by the operation. The Commission shall take account of the legitimate interest of undertakings in the protection of their business secrets. PT (Comments): PT agrees it is important that the Commission informs Member States about concentrations in the digital sector involving gatekeepers. In particular, PT further suggests that the information should be provided specifically at least to national competition authorities. This is consistent with the Commission's recent "Guidance on the application of the referral mechanism set out in Article 22 of the EU Merger Regulation to certain categories of cases", as concentrations notified under Article 12 of the DMA may be subject to referrals by national competition authorities to the Commission under Article 22 of the EU Merger Regulation. Furthermore, it is consistent with enabling the use of information gathered

	under Article 12 for the purpose of national merger control (Article 31). SE (Drafting): The Commission shall inform the Member States of any notification information received pursuant to paragraph 1 and publish a summary of the concentration, specifying the parties to the concentration, the undertakings concerned, their field of activity, the nature of the concentration and the list of the Member States concerned by the operation. SE (Comments): A suggestion from SE in accordance with the amendment in paragraph 2.
Article 13 Obligation of an audit	PT (Comments): PT agrees in general with the current draft of Article 13. SK (Comments):

	In general, we would welcome a addition of the **purpose** of the notification obligation.
Within six months after its designation pursuant to Article 3, a gatekeeper shall submit to the Commission an independently audited description of any techniques for profiling of end users that the gatekeeper applies to or across its core platform services identified pursuant to Article 3.	
The gatekeeper makes publicly available an overview of the audited description taking into account ~~the~~ **possible** limitations ~~imposed by the requirements of~~**involving** business ~~secrecy~~**secrets**. The description and its publicly available overview shall be updated at least annually.	DK (Drafting): The gatekeeper makes publicly available an overview of the audited description taking into account ~~the~~ **possible** limitations ~~imposed by the requirements of~~**in relation to** business ~~secrecy~~**secrets**. The description and its publicly available overview shall be updated at least annually. DK (Comments): We support the amendment, and propose a minor adjustment. PT (Comments): PT agrees with this draft as it ensures transparency and that relevant information is available to interested stakeholders.

	LT (Comments): We support the amendment.
	DE (Comments): The DMA should provide for rules in this Chapter III that foresee internal compliance mechanisms such as in the DSA proposal or in the GDPR. Internal compliance mechanisms could in particular enhance the adherence of the designated gatekeeper with the obligations laid down in this Regulation. The DMA could impose in that regard particularly the necessity to appoint compliance officers (see e.g. DSA Art. 32, Art. 37-39 GDPR), the necessity to perform regular risk assessment of the corporate practices (see Art. 25 DSA, Art. 35 GDPR) and the performance of regular independent audits (see Art. 28 DSA).
Chapter IV	LT (Comments): LT: general comment regarding MSs involvement. LT supports moderate and voluntary MSs involvement in the enforcement of the DMA. We welcome that a role of the MSs is increased in objectively justified cases,

	e.g. on-site inspections. However, LT stresses that the Cion should remain the only enforcer of the DMA, as an alternative process could undermine the single market approach.
Market investigation	
Article 14 Opening of a market investigation	PT (Comments): PT agrees in general with the current draft of Article 14.
1. When the Commission intends to carry out a market investigation in view of the possible adoption of decisions pursuant to Articles 15, 16 and 17, it shall adopt a decision opening a market investigation.	
1a. The Commission may exercise its powers of investigation pursuant to this Regulation before opening a market investigation pursuant to paragraph 1.	NL (Comments): **We welcome this clarification.** DK (Comments): We support this amendment. ES

	(Drafting): *deletion* ES (Comments): The investigative powers of the Commission should be limited to the market investigation procedure. LT (Comments): We support this amendment.
2. The opening decision shall specify:	
(a) the date of opening of the investigation;	
(b) the description of the issue to which the investigation relates to;	
(c) the purpose of the investigation.	
3. The Commission may reopen a market investigation that it has closed where:	
(a) there has been a material change in any of the facts on which the decision was based;	

(b) the decision was based on incomplete, incorrect or misleading information.	
Article 15 Market investigation for designating gatekeepers	
1. The Commission may **on its own initiative** conduct a market investigation for the purpose of examining whether an undertaking should be designated as a gatekeeper pursuant to Article 3(6), or in order to identify core platform services for a gatekeeper pursuant to Article 3(7). It shall endeavour to conclude its investigation by adopting a decision within twelve months from the opening of the market investigation in accordance with the advisory procedure referred to in Article 37a(2).	NL (Drafting): …It shall ~~**endeavour to**~~ conclude its investigation by adopting a decision within twelve months from the opening of the market investigation in accordance with the advisory… DK (Comments): We support this amendment, since it contributes to clarify the provision. However, a timely designation of gatekeepers is crucial and, for this reason, we suggest considering the introduction of binding deadlines for all the different phases of the market investigation. LU (Drafting): 1. The Commission may **on its own initiative** conduct a market investigation for the purpose of examining whether an undertaking should

	be designated as a gatekeeper pursuant to Article 3(6), or in order to identify core platform services for a gatekeeper pursuant to Article 3(7). It shall ~~endeavour to~~ conclude its investigation by adopting a decision within twelve months from the opening of the market investigation in accordance with the advisory procedure referred to in Article 37a(2). LU (Comments): The obligations on the Commission shall be as legally clear as possible. It is not clear why obligations regarding process shall ne be as clear or firm on the Commission. Once the Commission conducts a market investigation, its obligations shall be honoured and not merely "aimed at" or "endeavoured to". Good intentions are commendable but do not provide for legally certain outcomes. ES (Drafting): The Commission may **on its own initiative** conduct a market investigation for the purpose of examining whether an undertaking should be designated as a gatekeeper pursuant to Article 3(6), or in order to identify core platform services for a gatekeeper pursuant to Article 3(7). It shall ~~endeavour to~~ conclude its investigation by adopting a decision within

	twelve months from the opening of the market investigation in accordance with the advisory procedure referred to in Article 37a(2). ES (Comments): The time limits the Commission is subjected to should be certain, in order to ensure legal certainty. FR (Drafting): 1. The Commission may on its own initiative conduct a market investigation for the purpose of examining whether an undertaking should be designated as a gatekeeper pursuant to Article 3(6), or in order to identify core platform services for a gatekeeper pursuant to Article 3(7) and Article 3(8). It shall ~~endeavour to~~ conclude its investigation by adopting a decision within twelve months from the opening of the market investigation in accordance with the advisory procedure referred to in Article 37a(2). FR (Comments): This amendment ensures that the Commission will respect constrained deadlines in the process of designating gatekeepers by setting fixed

	deadlines. Moreover, the proposed wording is consistent with that of Regulation 139/2004 by way of example (no use of « endeavour »). Reference is made to the suggested procedure of identification of new core platform services under article 3(8). LT (Comments): We support this amendment.
2. In the course of a market investigation pursuant to paragraph 1, the Commission shall endeavour to communicate its preliminary findings to the undertaking 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 undertaking should be designated as a gatekeeper pursuant to Article 3(6) **and list, on a provisional basis, the relevant core platform services pursuant to article 3(7)**.	NL (Drafting): In the course of a market investigation pursuant to paragraph 1, the Commission shall ~~**endeavour to**~~ communicate its preliminary findings to the… DK (Comments): We support this amendment. DE (Comments):

	We strongly suggest that the preliminary findings are not only made available to the undertaking, but also to the Member States, in particular as they could directly affect on-going competition law procedures. This is part of the larger picture with regard to cooperation and coordination with Member States. LU (Drafting): 2. In the course of a market investigation pursuant to paragraph 1, the Commission shall ~~**endeavour to**~~ communicate its preliminary findings to the undertaking 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 undertaking should be designated as a gatekeeper pursuant to Article 3(6) **and list, on a provisional basis, the relevant core platform services pursuant to article 3(7)**. ES (Drafting): In the course of a market investigation pursuant to paragraph 1, the Commission shall ~~endeavour~~ ~~to~~ communicate its preliminary findings to the undertaking 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 undertaking should be designated as a gatekeeper pursuant to Article 3(6) **and list, on a provisional basis, the relevant core platform services pursuant to article 3(7)**. FR (Drafting): 2. In the course of a market investigation pursuant to paragraph 1, the Commission shall ~~endeavour to~~ communicate its preliminary findings to the undertaking 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 undertaking should be designated as a gatekeeper pursuant to Article 3(6) and list, on a provisional basis, the relevant core platform services pursuant to article 3(7). FR (Comments): Ibid. LT

	(Comments): We support this amendment.
3. Where the undertaking satisfies the thresholds set out in Article 3(2), but has presented sufficiently 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 undertaking within three months from the opening of the investigation.	NL (Drafting): 3. Where the undertaking satisfies the thresholds set out in Article 3(2), but has presented sufficiently 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 undertaking within three months from the opening of the investigation. LU (Drafting): 3. Where the undertaking satisfies the thresholds set out in Article 3(2), but has presented sufficiently 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 undertaking within three months from the opening of the investigation. ES (Drafting): 3. Where the undertaking satisfies the thresholds set out in Article 3(2), but has presented sufficiently 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 undertaking within three months from the opening of the investigation. FR (Drafting): 3. Where the undertaking satisfies the thresholds set out in Article 3(2), but has presented sufficiently 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 undertaking within three months from the opening of the investigation. FR (Comments): Ibid.
4. When the Commission pursuant to Article 3(6) designates as a gatekeeper an undertaking that does not yet enjoy an entrenched and durable position in its operations, but it is foreseeable that it will enjoy such a position in the near future, it shall declare applicable to that gatekeeper only obligations laid down in Article 5(b) and (d) and Article 6(1) points (e), (f), (h) and (i) as specified in the designation decision. The Commission shall only declare applicable those obligations that are appropriate and necessary to prevent that the gatekeeper concerned achieves by unfair means an entrenched and durable position in its operations. The Commission shall review such a designation in accordance with the procedure laid down in Article 4.	DE (Drafting): ~~4. When the Commission pursuant to Article 3(6) designates as a gatekeeper an undertaking that does not yet enjoy an entrenched and durable position in its operations, but it is foreseeable that it will enjoy such a position in the near future, it shall declare applicable to that gatekeeper only obligations laid down in Article 5(b) and (d) and Article 6(1) points (e), (f), (h) and (i) as specified in the designation decision. The Commission shall only declare applicable those obligations that are appropriate and necessary to prevent that the gatekeeper concerned achieves by unfair means an entrenched and durable position in its operations. The Commission shall review such a designation in accordance with the procedure laid down in Article 4.~~ DE (Comments):

	We still believe it would be preferable to regulate the obligations of emerging gatekeepers in the context of Art. 5, 6 (for example as a para. 2 in Art. 5 or para. 3 in Art. 6). FR (Drafting): 4. When the Commission pursuant to Article 3(6) designates as a gatekeeper an undertaking that does not yet enjoy an entrenched and durable position in its operations, but it is foreseeable that it will enjoy such a position ~~in the near future~~, it shall declare applicable to that gatekeeper only obligations laid down in Article 5(b) and (d) and Article 6(1) points (e), (f), (h) and (i) as specified in the designation decision. The Commission shall only declare applicable those obligations that are appropriate and necessary to prevent that the gatekeeper concerned achieves by unfair means an entrenched and durable position in its operations. The Commission shall review such a designation in accordance with the procedure laid down in Article 4. FR (Comments): This amendment proposes the deletion of references to positions "in the near future" which lead to uncertainty as to its use and create risks of

	recourse.
Article 16 Market investigation into systematic non-compliance	SK (Comments): In general, we would welcome further justifications of the principles and rules that the EC will follow when imposing behavioural and structural measures in view of a better legal certainity. However, we **do not support** the proposal of art. 16a as per the **DE-FR-NL paper.**
1. The Commission may conduct a market investigation for the purpose of examining whether a gatekeeper has engaged in systematic non-compliance. Where the market investigation shows that a gatekeeper has systematically infringed one or several of the obligations laid down in Articles 5 or 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 37a(2) 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.	NL (Drafting): 1. The Commission may conduct a market investigation for the purpose of examining whether a gatekeeper has engaged in systematic non-compliance. Where the market investigation shows that a gatekeeper has systematically infringed one or several of the obligations laid down in Articles 5 or 6 and **~~has further strengthened or extended its gatekeeper position in relation to the characteristics under Article 3(1)~~**, the Commission may by…. DE

	(Drafting): 1. The Commission may conduct a market investigation for the purpose of examining whether a gatekeeper has engaged in systematic non-compliance. Where the market investigation shows that a gatekeeper has systematically infringed one or several of the obligations laid down in Articles 5 or 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 37a(2) 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. DE (Comments): We believe the additional threshold is overly burdensome to prove and raises the bar for behavioural or structural measures too high. Systematic non-compliance should suffice. FR

	(Drafting): 1. The Commission may conduct a market investigation for the purpose of examining whether a gatekeeper has engaged in systematic non-compliance. Where the market investigation shows that a gatekeeper has systematically infringed one or several of the obligations laid down in Articles 5 or 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 37a(2) 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. FR (Comments): The French authorities wish to put in place a more flexible mechanism to maintain a standard of proof that is not too high and that would make the mechanism fully operational. We question whether it is necessary to demonstrate, in order to qualify a violation as "systematic", that the gatekeeper has strengthened or extended its position in relation to the criteria set out in Article 3(1), and whether this creates too high a standard of proof for the imposition of remedies,

	when the gatekeeper has already violated the obligations of Articles 5 and 6 on three occasions. If the current wording is maintained, it might be appropriate to clarify when the gatekeeper must have strengthened its position (from the last decision of non-compliance or from its designation decision?)
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.	
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 decisions pursuant to Article 25 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.	SK (Drafting): 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 decisions pursuant to Article 25 against a gatekeeper in relation to any of its core platform services within a period of ~~**five**~~ **ten 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. SK (Comments): The consequences of some infringements by the GK must not have/show a negative effect on the market within several years. Hence, **we opt for the extension of the period** within which previous decisions of non-

	compliance are to be followed- up to 10 years (the original proposal of 5 years, or at least a compromised time period btw. 5 and 10 years).
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.	DE (Drafting): ~~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.~~ DE (Comments): See above. FR (Drafting): ~~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.~~

	FR (Comments): Cf. amendment on the first paragraph.
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.	
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.	
	NL (Drafting): *Article 16a* *Market investigation into tailor-made remedies to safeguard markets'*

	contestability and fairness 1. The Commission may carry out a market investigation with the purpose of examining whether any tailor-made remedies pursuant to paragraph 2 should be imposed to a gatekeeper in order to ensure that the gatekeeper's core platform services markets are and remain contestable and fair. The Commission shall conclude its investigation by adopting a decision within twelve months from the opening of the market investigation. 2. When the market investigation pursuant to paragraph 1 shows that the obligations laid down in Articles 5 and 6 are not sufficient to prevent a gatekeeper from adopting practices that limit the contestability of core platform services or are unfair under the meaning of article 10(2) and that European competition law alone is insufficient to adequately and timely address the identified practices, the Commission may impose, by a decision adopted in accordance with the advisory procedure referred to in Article 32(4), any tailor-made implementation of the principle-based obligations described in paragraph 4, which is proportionate and necessary to ensure the objectives of the Regulation. 3. In its market investigation procedure, the Commission shall take due account of any relevant information made by concerned third

	parties such as business users or end users. 4. When adopting its decision pursuant to paragraph 2, the Commission shall implement measures deemed appropriate and necessary. These measures may concern: a. access to platforms (including interoperability obligations, obligations to give access to essential API's and obligations to use common standards), b. data-related interventions (including data mobility obligations, obligations to provide access to essential data and data silos), c. fair commercial relations (including non-discrimination obligations, bans on distortionary self-preferencing and obligations to make use of fair contractual terms), d. end-users and business users open choices (including obligations to proactively offer options to users, regulation of defaults and design of choice architecture).[11] 5. The Commission shall communicate its objections to the concerned gatekeeper within six months from the opening of the investigation. In its objections, the Commission shall explain whether it preliminarily considers that the conditions of paragraphs

[11] For those obligations stating that a gatekeeper has to provide access to its infrastructure or to essential inputs, it should be included in the recitals that such access always has to be provided under FRAND conditions.

	1 and 2 are met and which remedy or remedies it preliminarily considers necessary and proportionate. 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. NL (Comments): In our paper with France and Germany, we have called for more future-proofness and tailor-made remediation to cope with the reality of digital markets. Digital markets and gatekeepers' strategies therein change rapidly. This requires dynamic and agile regulation that can adapt to these circumstances, specifically because preventing damage is much easier in these markets than attempting to reverse it. Furthermore, while we welcome the speed that the self-executing obligations in articles 5 and 6 of the DMA provide, for some gatekeepers' practises more may be needed. However, due to the heterogeneity of gatekeepers and the markets in which they operate, adding further intervention possibilities to the lists in these articles might not be proportional and could risk

	harming innovation. We want a regulation that is both future-proof and allowing, if necessary, for a dedicated remediation tailored to the specific business model of each gatekeeper. In that way, DMA regulation should neither be too weak nor too heavy-handed. To this end, we have developed an instrument with which additional obligations could be imposed on gatekeepers. Under our approach the Commission could impose proportional and necessary measures to safeguard contestability and fairness in digital markets, following a market investigation. To maximise speed and legal certainty within this mechanism, the decision of the Commission would be based on a pre-defined list consisting of a limitative set of principle-based measures it could choose from: access to platforms, data-related interventions, fair commercial relations and end-users and business-users open choices. These measures would then be tailored to what is needed for a specific gatekeeper. Obligations would only be imposed if the preliminary results of the market investigation showed that the existing obligations in articles 5 or 6 are not sufficient to ensure fairness and market contestability in the precise case under investigation and that competition law alone is insufficient to adequately and timely address the identified practices. FR (Drafting): Article 16a Market investigation into tailor-made remedies to safeguard markets' contestability and fairness 1.The Commission may carry out a market investigation with the purpose

	of examining whether any tailor-made remedies pursuant to paragraph 2 should be imposed to a gatekeeper in order to ensure that the gatekeeper's core platform services markets are and remain contestable and fair. The Commission shall conclude its investigation by adopting a decision within twelve months from the opening of the market investigation. 2. When the market investigation pursuant to paragraph 1 shows that the obligations laid down in Articles 5 and 6 are not sufficient to prevent a gatekeeper from adopting practices that limit the contestability of core platform services or are unfair under the meaning of article 10(2) and that European competition law alone is insufficient to adequately and timely address the identified practices, the Commission may impose, by a decision adopted in accordance with the advisory procedure referred to in Article 32(4), any tailor-made implementation of the principle-based obligations described in paragraph 4, which is proportionate and necessary to ensure the objectives of the Regulation. 3. In its market investigation procedure, the Commission shall take due account of any relevant information made by concerned third parties such as business users or end users. 4. When adopting its decision pursuant to paragraph 2, the Commission shall implement measures deemed appropriate and necessary. These measures may concern: (a) access to platforms (including interoperability obligations, obligations to give access to essential API's and obligations to use common standards), (b) data-related interventions (including data mobility obligations, obligations to provide access to essential data and data silos), (c) fair commercial relations (including non-discrimination obligations, bans on distortionary self-preferencing and obligations to make use of fair contractual terms), (d) end-users and business users open choices (including obligations

	to proactively offer options to users, regulation of defaults and design of choice architecture). 5. The Commission shall communicate its objections to the concerned gatekeeper within six months from the opening of the investigation. In its objections, the Commission shall explain whether it preliminarily considers that the conditions of paragraphs 1 and 2 are met and which remedy or remedies it preliminarily considers necessary and proportionate. 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. FR (Comments): The French authorities welcome the Commission's proposal, in particular the creation of self-executing or quasi self-executing obligations as presented in Articles 5 and 6, corresponding to option 3(a) of the impact assessment. However, they note that, although this regulatory logic provides clarity and allows for a fast implementation, this logic of black lists may not be sufficient on its own, especially regarding the constant and rapid evolution of gatekeepers' models and practices and the different business model of each gatekeeper. We have to make sure that the tools provided by the DMA won't become,

	in two or three years, outdated and won't require a new revision of the regulation. We need also to ensure that, under certain conditions, the DMA regulator is in a position, beyond the control of blacklisted practices, to take appropriate and "case-by-case" remediation measures, precisely fine-tuned to the practice and to the respective business model of each gatekeeper. The French authorities have constantly advocated for better additional flexibility in DMA and propose the following amendment to accordingly complete the DMA in a sound articulation with the current regulatory scheme. First of all, it is necessary for the regulation to be dynamic and future-proof in order to adapt to the rapid evolution of gatekeepers. The mechanism provided in Article 10 aims at achieving this adaptability. It may nevertheless present some limits (a timeframe of 24 months, a limited scope of delegated acts, a complex drawing up of obligations applicable to all gatekeepers). Individualised responses to practices that are specific to certain actors are also necessary. There is a need to implement tailor-made remedies, in addition to the very precise obligations of Articles 5 and 6 and the specification process provided in Article 7. For the French authorities, it is a priority to achieve an additional more flexible regulatory competence for a regulator to be able to intervene on a case-by-case basis: it could be done by giving this regulator the capacity to impose injunctions specifically adapted to the relevant gatekeeper and precisely tailored, in order to prevent unfair practices or to ensure the contestability of markets. The proposed amendment aims at introducing the possibility for the Commission, following a 12-months market investigation, to impose proportionate and necessary injunctions to safeguard the markets' contestability and fairness. The proposal is coherent with two major pillars of the Commission's proposal: (1) it is based on the common tool of the DMA (a market investigation) and (2) it is limited by the two core principles of the DMA set out in article 1 (markets' contestability and fairness). The decision of the Commission would be further guided and

	made more rapid than traditional antitrust intervention by pre-defining a list consisting of a limitative set of measures it could choose from: access to platforms, data-related interventions, fair commercial relations and end-users and business-users open choices. This proposal is designed to complement and not to replace the obligations set out in Articles 5 and 6. It is imperative to preserve the fast implementation allowed by these articles. The proposed "flexibility provision and procedure" would only be implemented if the preliminary results of the market investigation showed that the existing obligations are not sufficient to ensure fairness and market contestability in the precise case under investigation. The French authorities pay duly attention to the coherence and complementarity of their proposal with the obligations set out in Articles 5 and 6 and their enforcement mechanism, as well as with the Commission's ability to impose tailor-made and proportionately defined remedies. The French authorities will be careful to ensure that the proposal and its developments during the negotiations do not call into question the legal basis on which the DMA is currently based (Article 114 TFEU). Furthermore, they will ensure that coordination of the DMA with competition policy is clarified.
Article 17 Market investigation into new services and new practices	PT (Comments): <u>PT agrees in general with the current draft of Article 17.</u> FR

	(Comments): As the analysis of new practices in the light of the guiding principles of Article 10 (fairness and contestability) and the choice of appropriate new obligations may justify an in-depth and therefore lengthy analysis, provision could be made, with a view to avoiding serious and irreparable harm to user undertakings or end-users of access controllers, for the imposition of provisional remedies in the short term pending the outcome of the lengthy procedure. In other words, a mechanism for interim measures could usefully be provided to enable the regulator to intervene quickly in the face of a new practice that is likely to undermine the fairness and contestability of the provision of an essential platform service. The aim would be to impose a new interim obligation on the access controllers concerned as a matter of urgency, pending the definition of the most appropriate obligation to be added to Articles 5 and 6, at the end of the investigation under Article 17. In this respect, it should be recalled that the provisional measures provided for in Article 22 only concern bringing an access controller into compliance with the existing rules of Articles 5 and 6, and therefore do not allow for the imposition of a provisional remedy in response to a new practice of access controllers. The French authorities therefore reserve the right to propose a mechanism of interim measures, in Block VI, to compensate for the lack of reactivity in the event that an access controller implements a new practice. To this purpose, the French Authorities propose a modification in Article 22
The Commission may conduct a market investigation ~~with~~**for** 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~~ **for the**	BE

purpose of detecting types of practices that limit the contestability of core platform services or **type of practices that** are 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.	(Drafting): The Commission may conduct a market investigation ~~with~~**for** 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~~ **for the purpose of detecting** types of practices that limit the contestability of core platform services or **types of practices that** are 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. DK (Comments): We support the proposed changes, since they contribute to further clarify the provision. AT (Drafting): The Commission may conduct a market investigation ~~with~~**for** 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~~ **for the purpose of detecting** types of practices that limit the contestability of core platform services or **type of practices that** are unfair and which are not effectively addressed by this Regulation. It shall issue a public report at the latest within ~~24~~ **12** months from the opening of the market

	investigation. AT (Comments): The market investigation pursuant to Art. 17 shall be concluded within 12 months, where possible, in order to quickly adopt follow-up measures such as delegated acts and thus ensure the futureproofness of the DMA. IE (Drafting): The Commission may conduct a market investigation ~~with~~**for** the purpose of examining whether one or more services within the digital sector should be added or removed to the list of core platform services or ~~to detect~~ **for the purpose of detecting** types of practices that limit the contestability of core platform services or **type of practices that** are 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. IE (Comments): IE fully suppports the Swedish proposal to allow a Market Investigation to

	remove a designation or obligation to correct for any potential over-regulation in the DMA. LT (Comments): We support changes.
Where appropriate, that report shall **be accompanied by**:	
(a) ~~be accompanied by~~ a proposal to amend this Regulation in order to include additional services within the digital sector in the list of core platform services laid down in point 2 of Article 2~~;~~ **or to include new obligations in Article 5 or 6; or**	FI (Drafting): (a) ~~be accompanied by~~ a proposal to amend this Regulation in order to include additional services **or to remove services** within the digital sector in the list of core platform services laid down in point 2 of Article 2~~;~~ **or to include new obligations or to remove obligations in Article 5 or 6; or** FI (Comments): FI considers that the Commission should also be enabled to remove obligations, when the results of market investigation indicate that such obligations are not justifiable and proportionate, and hence not fulfilling the aims of the Regulation.

	DK (Comments): We support the proposed change, in particular reference to the fact that the inclusion of new obligations will require to amend the Regulation. In our view, a market investigation under Art.17 should also enable to propose the removal of an obligation from Art.5 or 6, when the investigation evidences such need. LU (Drafting): (a) ~~be accompanied by~~ a proposal to amend this Regulation in order to include additional services within the digital sector in the list of core platform services laid down in point 2 of Article 2~~;~~ **or to include new obligations in Article 5 or 6; or to remove existing obligations in Article 5 or 6 ; or** LU (Comments): The ordinary legislative procedure shall also be used to remove obligations in Articles 5 and 6, as this is also concerning an essential element of the DMA. ES

	(Drafting): (a) a proposal to amend this Regulation in order to ~~include additional services within the digital sector in the list of core platform services laid down in point 2 of Article 2 or to include additional obligations to Articles 5 and 6;~~ **adapt the list of core platform services laid down in point 2 of Article 2.** **(a) be accompanied by a proposal to amend this Regulation in order to adapt the obligations in articles 5 and 6.** ES (Comments): This point should provide further flexibility. It should be possible to propose also suppression of specific obligations / CPS. SE (Drafting): (a) be accompanied by a proposal to amend this Regulation in order to add, remove or amend services within the digital sector in the list of core platform services laid down in point 2 of Article 2; or to add, remove or amend obligations in Article 5 or 6; or SE (Comments):

	According to SE it is important that CPS´s and obligations can be removed or amended if a market investigation shows that these are no longer relevant in the light of technological progress or the development on the market. This is, according to SE, a matter of proportionality and of creating a balanced legislation on the inner market. LT (Comments): We support the proposed change. In addition, we support MSs, which suggest adding a possibility to *remove* an obligation from Art. 5 or 6. SK (Drafting): (a) ~~be accompanied by~~ a proposal to amend this Regulation in order to include additional services **or to remove services** within the digital sector in the list of core platform services laid down in point 2 of Article 2~~;~~ **or to include new obligations or to remove obligations in Article 5 or 6; or** SK (Comments): We suggest also that the EC should also be able to **remove obligations** (based on market investigation results) when (due to various changes on

	the market) the obligations of art. 5 and art. 6 will no longer meet the purpose of the Regulation (in support of SE proposal).
(b) ~~be accompanied by~~ a **draft** delegated act ~~amending~~**supplementing the obligations laid down in** Articles 5 or 6 as provided for in Article 10.	FI (Comments): FI questions if Art. 17(b) is compatible with Art. 37(1) of the Regulation, especially concerning its relation with Art. 290 TFEU. FI considers that the purposefulness of a *draft* delegated act can be questioned, as the Commission has nevertheless the right to issue delegated acts on its own initiative. In FI understanding, the Commission does not have responsibility to give a draft delegated act when acting in line Art. 290 TFEU. DK (Comments): We support this amendment. LT (Comments): We support the amendment.

Chapter V	DE (Comments): As outlined in the FR/NL/DE position paper, we believe that complementary enforcement by national competition authorities and the establishment of a mechanism for close coordination and cooperation between those agencies is indispensable for an effective enforcement of the DMA. In addition to that, a close cooperation and coordination between the Commission and the Member States authorities requires strongly also the establishment of a "Digital Markets Advisory Group" as different legislations will overlap with the DMA. For the purpose of enforcing this Regulation, the Commission should be supported by this Advisory Group with relevant and cross-sectoral expertise. This Advisory Group should be composed by different competent authorities of the Member States including i.a. national regulatory authorities in implementing the EU regulatory framework for electronic communications. With a view to the details of such proposals we refer to our common position paper. PT (Comments): PT supports the changes to Articles 19(5), 20(2) and 21(2), (3), (4), (5)

	and (8) clarifying that the competent authorities are those involved in proceedings mentioned in Article 1(6), ensuring that the Commission benefits from the experience of national competition authorities with requests for information, interviews, inspections, and also taking into consideration the extent to which the obligations in Articles 5 and 6 are based in the experience gathered by the Commission through the enforcement of competition rules.
Investigative, enforcement and monitoring powers	SE (Comments): SE wonders if the investigative powers, in which a reference is made to article 1 (6), means that the competition authorities would be obliged to assist the Commission even in cases where other competent national authorities will be concerned in a case at the Commission. SE would also like to refer to its comment under the headline to article 32a and wonders about the relationship to article 32a (5).
Article 18 Opening of proceedings	PT (Comments):

	PT agrees in general with the current draft of Article 18.
1. Where the Commission intends to carry out proceedings in view of the possible adoption of decisions pursuant to Articles 7, 25 and 26, it shall adopt a decision opening a proceeding.	
2. The Commission may exercise its powers of investigation pursuant to this Regulation before opening proceedings.	DK (Comments): We support this amendment. AT (Drafting): ~~**2. The Commission may exercise its powers of investigation pursuant to this Regulation before opening proceedings.**~~ AT (Comments): We are not fully supporting this amendment. We were wondering what the purpose of an opening of preceeding decision is, if there are no legal consequences connected to it. As the Commission is granted far-reaching powers in this Regulation, we need an formalized framework for the exercise of these powers. Furthermore, the Commision does not always need a formal decision for their investigative powers, eg. a simple request

	for information can be done at any stage. ES (Comments): The investigative powers of the Commission should be limited to the specific proceedings. The opposite will mean a loss of guarantees for the GK. LT (Comments): We support this amendment.
Article 19 Requests for information	PT (Comments): PT agrees in general with the current draft of Article 19.
1. In order to carry out the duties assigned to it by this Regulation, the Commission may by simple request or by decision require information from undertakings and associations of undertakings to provide all necessary information, including for the purpose of monitoring, implementing and enforcing the rules laid down in this Regulation. The Commission may also request access to ~~data bases and~~**any data and** algorithms of undertakings and request explanations on those by a simple request or by a decision.	FI (Drafting): In order to carry out the duties assigned to it by this Regulation, the Commission may by simple request or by decision require information from undertakings and associations of undertakings to provide all

	necessary information, ~~**including**~~ for the purpose of monitoring, implementing and enforcing the rules laid down in this Regulation. The Commission may also request access to ~~data bases and~~**any data and** algorithms of undertakings and request explanations on those by a simple request or by a decision. FI (Comments): FI considers that the word "including" should be deleted to specify which information should be provided. Otherwise this provision is open ended. Enabling the Commission to request all necessary information for the purpose of monitoring, implementing and enforcing the rules laid down in this Regulation would cover all information that the Commission might need. DK (Comments): We support this amendment. DE (Drafting): 1. In order to carry out the duties assigned to it by this Regulation, the Commission may by simple request or by decision require information from undertakings and associations of undertakings, all natural or legal person to provide all necessary information, including for the purpose of monitoring, implementing and enforcing the rules laid down in this

	Regulation. The Commission may ~~also~~ in particular request access to ~~data bases and~~**any data and** algorithms of undertakings and request explanations on those by a simple request or by a decision. DE (Comments): Recital 70 states that the information can be requested also from natural or legal persons. This must be reflected in para. 1 accordingly. The second sentence can be construed as a subset of the first sentence. This way, any discussion if a Commission request concerns information (sentence 1) or access (sentence 2) can be avoided. The term algorithm should be defined (at least in a recital). LU (Drafting): 1. In order to carry out the duties assigned to it by this Regulation, ~~T~~the Commission may by simple request or by decision require information from undertakings and associations of undertakings to provide all necessary information, ~~**including**~~ for the purpose of monitoring, implementing and enforcing the rules laid down in this Regulation. The Commission may also request access to ~~data bases and~~ **any data and** algorithms of undertakings and request explanations on

	those by a simple request or by a decision. LU (Comments): The request for information shall be strictly for the purposes of monitoring, implementing and enforcing the DMA. Any fishing expeditions should be avoided. While Regulation 1/2003 is usually applied in case-by-case situations, the DMA establishes generally applicable rules which need to be limited to what is necessary and proportionate across the board. This is why we propose to delete the term "including". SE (Comments): It may be considered to adjust the last sentence to clarify that "any data and algorithms" are included in the "information" that can be required or requested by the Commission according to the first sentence. LT (Drafting): 1. In order to carry out the duties assigned to it by this Regulation, the Commission may by simple request or by decision require information

	from undertakings and associations of undertakings to provide all necessary information~~, including~~ for the purpose of monitoring, implementing and enforcing the rules laid down in this Regulation. The Commission may also request access to ~~data bases and~~ **data and** algorithms of undertakings and request explanations on those by a simple request or by a decision. LT (Comments): We propose to delete a word ", including". The arguments have already been listed during the WP. SK (Drafting): In order to carry out the duties assigned to it by this Regulation, the Commission may by simple request or by decision require information from undertakings and associations of undertakings to provide all necessary information, ~~**including**~~ for the purpose of monitoring, implementing and enforcing the rules laid down in this Regulation. The Commission may also request access to ~~data bases and~~**any data and** algorithms of undertakings and request explanations on those by a simple request or by a decision.

	SK (Comments): The wording **"including"** implies a possible use of information other than that of the pursue of monitoring, implementing and enforcing the rules as per the DMA. We support more legal certainity by eliminating this term.
~~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.~~	DK (Comments): We support this amendment. LT (Comments): We support this amendment.
3. When sending a simple request for information to an undertaking or association of undertakings, the Commission shall state the the legal basis and purpose of the request, specify what information is required and fix the time-limit within which the information is to be provided, and the penalties provided for in Article 26 for supplying incomplete, incorrect or misleading information or explanations.	DK (Drafting): 3. When sending a simple request for information to an undertaking or association of undertakings, the Commission shall state the legal basis and purpose of the request, specify what information is required and fix the time-limit within which the information is to be provided, and the penalties provided for in Article 26 for supplying incomplete, incorrect or

	misleading information or explanations. DK (Comments): The amendment is just to correct an editing mistake. DE (Drafting): 3. When sending a simple request for information to an undertaking or association of undertakings, any natural or legal person the Commission shall state the the legal basis and purpose of the request, specify what information is required and fix the time-limit within which the information is to be provided, and the penalties provided for in Article 26 for supplying incomplete, incorrect or misleading information or explanations. The Commission may specifying a format for providing the requested information. In particular the Commission may require the use of an online platform. PT (Drafting): 3. When sending a simple request for information to an undertaking or association of undertakings, the Commission shall state the legal basis and the purpose of the request, specify what information is required and

	fix the time-limit within which the information is to be provided, and the penalties provided for in Article 26 for supplying incomplete, incorrect or misleading information or explanations.
4. Where the Commission requires undertakings and associations of undertakings to supply information by decision, it shall state the legal basis and 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.	DE (Drafting): 4. Where the Commission requires undertakings and associations of undertakings, any legal or natural person to supply information by decision, it shall state the legal basis and 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. SE (Comments): Given that “databases” has been deleted in point 1 and replaced with

	"data", the same change should be considered in this point. FR (Drafting): 4. Where the Commission requires undertakings and associations of undertakings to supply information by decision, it shall state the legal basis and 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~~ The decision** 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. FR (Comments): For the sake of clarity, the French authorities suggest replacing "it" with "The decision" and skipping a line because the latter phrase applies to both general and database decisions

5. The undertakings or associations of undertakings or their representatives and, in the case of legal persons, companies or firms, or associations having no legal personality, the persons authorised to represent them by law or by their constitution, shall supply the information requested on behalf of the undertaking or the association of undertakings concerned. Lawyers duly authorised to act may supply the information on behalf of their clients. The latter shall remain fully responsible if the information supplied is incomplete, incorrect or misleading.	
5a The Commission shall without delay forward a copy of the simple request or of the decision requesting information to the competent authority of the Member State**, within the meaning of Article 1(6),** in whose territory ~~the principal place of busines of~~ the undertaking or association of undertakings is ~~situated~~**established**.	DK (Comments): We support this amendment. AT (Drafting): 5a The Commission shall without delay forward a copy of the simple request or of the decision requesting information to the **competent national authorities~~y~~ ~~of~~ designated by the Member State ~~within the meaning of Article 1(6),~~** in whose territory ~~the principal place of busines of~~ the undertaking or association of undertakings is ~~situated~~**established**. AT (Comments): We see problems that in Article Art. 19 - 21 a reference is made to a

	specific national authority and there is no leeway left for Member States to decide which authority they want to declare as competent for the DMA purposes. We therefore suggest to rather speak of "competent national authorities designated by the Member States". DE (Comments): We welcome the proposed specification. However, as Art. 1(6) does not explicitly refer to national authorities it could be specified that the reference refers to national competition authorities. PT (Drafting): 5a The Commission shall without delay forward a copy of the simple request or of the decision requesting information to the authority of the Member State enforcing the rules referred to in **Article 1(6)** in whose territory ~~the principal place of busines of~~ the undertaking or association of undertakings is ~~situated~~**established**. PT (Comments): PT believes that it is clearer to refer to "authority of the Member State

	enforcing the rules referred to in Article 1(6)", as already used in Article 32a(3). LT (Comments): We support this amendment.
6. At the request of the Commission, the competent authorities of the Member States shall provide the Commission with all necessary information in their possession to carry out the duties assigned to it by this Regulation.	DE (Drafting): 6. At the request of the Commission, the competent authorities of the Member States shall provide the Commission with all necessary information in their possession, including business secrets and personal data, to carry out the duties assigned to it by this Regulation.
Article 20 Power to carry out interviews and take statements	PT (Comments): PT agrees in general with the current draft of Article 20. LT (Comments):

	We support amendments.
1. In order to carry out the duties assigned to it by this Regulation, the Commission may interview any natural or legal person which consents to being interviewed for the purpose of collecting information, relating to the subject-matter of an investigation, including in relation to the monitoring, implementing and enforcing of the rules laid down in this Regulation. **The Commission shall be entitled to record such interview by any technical means.**	DK (Comments): We support this amendment.
2. Where an interview pursuant to paragraph 1 is conducted on the premises of an undertaking, the Commission shall inform the competent authority of the Member State, within the meaning of Article 1(6), in whose territory the interview takes place. If so requested by the said competent authority, its officials may assist the officials and other accompanying persons authorised by the Commission to conduct the interview.	DK (Comments): We support this amendment, since it clarifies the role of MSs in whose territory the interview takes place. AT (Drafting): **2. Where an interview pursuant to paragraph 1 is conducted on the premises of an undertaking, the Commission shall inform the competent national authorities~~ of~~ designated by the Member State ~~within the meaning of Article 1(6),~~ in whose territory the interview takes place. If so requested by the said competent authority, its officials may assist the officials and other accompanying persons authorised by the Commission to conduct the interview.**

	AT (Comments): see comment Art. 19 (5a) DE (Comments): We welcome the proposed amendment. PT (Drafting): **2. Where an interview pursuant to paragraph 1 is conducted on the premises of an undertaking, the Commission shall inform the authority of the Member State** enforcing the rules referred to in **Article 1(6) in whose territory the interview takes place. If so requested by the said competent authority, its officials may assist the officials and other accompanying persons authorised by the Commission to conduct the interview.** PT (Comments): PT believes that it is clearer to refer to "authority of the Member State

	enforcing the rules referred to in Article 1(6)", as already used in Article 32a(3).
Article 21 Powers to conduct ~~on-site~~ inspections	FI (Comments): FI supports the made amendments to Art. 21. Art. 21 now ensures that inspections conducted under the DMA are following the same principles as the ones in Reg. 1/2003 (Art. 20). DE (Comments): We welcome the proposed amendments, in particular the specifications with a view to the rights of the national competition authorities. However, we believe that complementary investigation measures on their own initiative are a prerequiste for an effective enforcement of the DMA. PT (Comments): PT agrees in general with the current draft of Article 21. LT (Comments):

	We support amendments. PL (Comments): We want article 21 to ensure coherent set of competences in the area of inspection. We think it is essential to avoid dualism of competences, which may occur especially in controls carried out by delegated natrional autorities on behalf of the Commission. Therefore, in our opinion DMA should use already existing solutions, especially the procedure desrcibed in art 20 of the Regulation 1/2003, which as we undersand article 21 was inspired by.
1. In order to carry out the duties assigned to it by this Regulation, the Commission may conduct ~~on site~~**all necessary** inspections at the premises of an undertaking or association of undertakings.	
1a. The officials and other accompanying persons authorised by the Commission to conduct an inspection are empowered:	NL (Comments): **We support this clarification.** DK (Comments): We support this amendment, since it reproduces similar powers already

	available under Reg.1/2003 in the context of competition law enforcement.
(a) to enter any premises, land and means of transport of undertakings and associations of undertakings;	
(b) to examine the books and other records related to the business, irrespective of the medium on which they are stored;	
(c) to take or obtain in any form copies of or extracts from such books or records;	
(d) to require the undertaking or association of undertakings to provide access to and explanations on its organisation, functioning, IT system, algorithms, data-handling and business practices and to record or document the explanations given;	
(e) to seal any business premises and books or records for the period and to the extent necessary for the inspection;	
(f) to ask any representative or member of staff of the undertaking or association of undertakings for explanations on facts or documents relating to the subject-matter and purpose of the inspection and to record the answers;	
(g) to address questions to any representative or member of staff relating to the subject-matter and purpose of the inspection and to record the answers.	SE (Drafting):

	SE (Comments): SE considers that this provision is too far-reaching and should not be included in the Regulation. Questions that go beyond those that can be asked under point f) are likely better asked in an interview or an RFI. Otherwise there is a risk that the information collected is unreliable given the stressful circumstances during an on-site inspection.
2. ~~On-site i~~**Inspections** may also be carried out with the assistance of auditors or experts appointed by the Commission pursuant to Article 24(2) as well as the competent authority of the Member State **within the meaning of Article 1(6)** in whose territory the inspection is to be conducted.	DK (Comments): We support this amendment. AT (Drafting): 2. ~~On-site i~~**Inspections** may also be carried out with the assistance of auditors or experts appointed by the Commission pursuant to Article 24(2) as well as the **competent national authorities~~y of~~ designated by the Member State ~~within the meaning of Article 1(6),~~** in whose territory the inspection is to be conducted. AT

	(Comments): see comment Art. 19 (5a) PT (Drafting): 2. ~~On-site i~~**Inspections** may also be carried out with the assistance of auditors or experts appointed by the Commission pursuant to Article 24(2) as well as the competent authority of the Member State enforcing the rules referred to in **Article 1(6)** in whose territory the inspection is to be conducted. PT (Comments): PT believes that it is clearer to refer to "authority of the Member State enforcing the rules referred to in Article 1(6)", as already used in Article 32a(3).
3. During ~~on-site~~ inspections the Commission, auditors or experts appointed by it as well as the competent authority of the Member State **within the meaning of Article 1(6)** in whose territory the inspection is to be conducted may require the undertaking or association of undertakings to provide access to and explanations on its organisation, functioning, IT system, algorithms, data-handling and business conducts. The Commission and auditors or experts appointed by it as well as the	DK (Comments): We support the amendments.

competent authority of the Member State **within the meaning of Article 1(6)** in whose territory the inspection is to be conducted may address questions to any representative or member of staff.	AT (Drafting): 3. During ~~on-site~~ inspections the Commission, auditors or experts appointed by it as well as the **competent national authorities~~y of~~ designated by the Member State ~~within the meaning of Article 1(6),~~** in whose territory the inspection is to be conducted may require the undertaking or association of undertakings to provide access to and explanations on its organisation, functioning, IT system, algorithms, data-handling and business conducts. The Commission and auditors or experts appointed by it as well as the **competent national authorities~~y of~~ designated by the Member State ~~within the meaning of Article 1(6),~~** in whose territory the inspection is to be conducted may address questions to any representative or member of staff. AT (Comments): see comment Art. 19 (5a) PT (Drafting): 3. During ~~on-site~~ inspections the Commission, auditors or experts

	appointed by it as well as the authority of the Member State enforcing the rules referred to in **Article 1(6)** in whose territory the inspection is to be conducted may require the undertaking or association of undertakings to provide access to and explanations on its organisation, functioning, IT system, algorithms, data-handling and business conducts. The Commission and auditors or experts appointed by it as well as the authority of the Member State enforcing the rules referred to in **Article 1(6)** in whose territory the inspection is to be conducted may address questions to any representative or member of staff. PT (Comments): PT believes that it is clearer to refer to "authority of the Member State enforcing the rules referred to in Article 1(6)", as already used in Article 32a(3). SE (Comments): Given the changes in point 1, some parts of this point are now repetitive. It may be considered if this point can be shortened to avoid repetition.

4. Undertakings or associations of undertakings are required to submit to an ~~on-site~~ inspection ordered by decision of the Commission. The decision shall specify the subject matter and purpose of the visit, set the date on which it is to begin and indicate the penalties provided for in Articles 26 and 27 and the right to have the decision reviewed by the Court of Justice of the European Union. **The Commission shall take such decisions after consulting the competent authority of the Member State within the meaning of Article 1(6) in whose territory the inspection is to be conducted.**	DK (Comments): We support the amendments. AT (Drafting): 4. Undertakings or associations of undertakings are required to submit to an ~~on-site~~ inspection ordered by decision of the Commission. The decision shall specify the subject matter and purpose of the visit, set the date on which it is to begin and indicate the penalties provided for in Articles 26 and 27 and the right to have the decision reviewed by the Court of Justice of the European Union. **The Commission shall take such decisions after consulting the competent national authorities~~y of~~ designated by the Member State ~~within the meaning of Article 1(6),~~ in whose territory the inspection is to be conducted.** AT (Comments): see comment Art. 19 (5a) PT

	(Drafting): 4. Undertakings or associations of undertakings are required to submit to an ~~on-site~~ inspection ordered by decision of the Commission. The decision shall specify the subject matter and purpose of the visit, set the date on which it is to begin and indicate the penalties provided for in Articles 26 and 27 and the right to have the decision reviewed by the Court of Justice of the European Union. **The Commission shall take such decisions after consulting the authority of the Member State** enforcing the rules referred to in **Article 1(6) in whose territory the inspection is to be conducted.**
5. **Officials of as well as those authorised or appointed by the competent authority of the Member State within the meaning of Article 1(6) in whose territory the inspection is to be conducted shall, at the request of that authority or of the Commission, actively assist the officials and other accompanying persons authorised by the Commission. To this end, they shall enjoy the powers specified in paragraph 2.**	DK (Comments): We support this amendment. AT (Drafting): 5. **Officials of as well as those authorised or appointed by the competent national authorities~~y of~~ designated by the Member State ~~within the meaning of Article 1(6),~~ in whose territory the inspection is to be conducted shall, at the request of that authority or of the**

	Commission, actively assist the officials and other accompanying persons authorised by the Commission. To this end, they shall enjoy the powers specified in paragraph 2. AT (Comments): see comment Art. 19 (5a) PT (Drafting): 5**. Officials of as well as those authorised or appointed by the authority of the Member State** enforcing the rules referred to in **Article 1(6) in whose territory the inspection is to be conducted shall, at the request of that authority or of the Commission, actively assist the officials and other accompanying persons authorised by the Commission. To this end, they shall enjoy the powers specified in paragraph 2.** PT (Comments): PT believes that it is clearer to refer to "authority of the Member State enforcing the rules referred to in Article 1(6)", as already used in Article

	32a(3). SE (Comments): The reference may be looked over.
6. **Where the officials and other accompanying persons authorised by the Commission find that an undertaking opposes an inspection ordered pursuant to this Article, the Member State concerned shall afford them the necessary assistance, requesting where appropriate the assistance of the police or of an equivalent enforcement authority, so as to enable them to conduct their inspection.**	DK (Comments): We support this amendment.
7. **If the assistance provided for in paragraph 7 requires authorisation from a judicial authority according to national rules, such authorisation shall be applied for. Such authorisation may also be applied for as a precautionary measure.**	DK (Comments): We support this amendment. AT (Comments): The reference should probably refer to paragraph 6. SE (Comments):

	The reference may be looked over.
8. **Where authorisation as referred to in paragraph 8 is applied for, the national judicial authority shall control that the Commission decision is authentic and that the coercive measures envisaged are neither arbitrary nor excessive having regard to the subject matter of the inspection. In its control of the proportionality of the coercive measures, the national judicial authority may ask the Commission, directly or through the competent authority of the Member State within the meaning of Article 1(6), for detailed explanations in particular on the grounds the Commission has for suspecting infringement of this Regulation, as well as on the seriousness of the suspected infringement and on the nature of the involvement of the undertaking concerned. However, the national judicial authority may not call into question the necessity for the inspection nor demand that it be provided with the information in the file of the Commission. The lawfulness of the Commission decision shall be subject to review only by the Court of Justice of the European Union.**	DK (Comments): We support this amendment. AT (Drafting): 8. **Where authorisation as referred to in paragraph 7~~8~~ is applied for, the national judicial authority shall control that the Commission decision is authentic and that the coercive measures envisaged are neither arbitrary nor excessive having regard to the subject matter of the inspection. In its control of the proportionality of the coercive measures, the national judicial authority may ask the Commission, directly or through the competent national authorities~~y of~~ designated by the Member State ~~within the meaning of Article 1(6),~~ for detailed explanations in particular on the grounds the Commission has for suspecting infringement of this Regulation, as well as on the seriousness of the suspected infringement and on the nature of the involvement of the undertaking concerned. However, the national judicial authority may not call into question the necessity for the**

	inspection nor demand that it be provided with the information in the file of the Commission. The lawfulness of the Commission decision shall be subject to review only by the Court of Justice of the European Union. AT (Comments): see comment Art. 19 (5a) PT (Drafting): 8**. Where authorisation as referred to in paragraph 8 is applied for, the national judicial authority shall control that the Commission decision is authentic and that the coercive measures envisaged are neither arbitrary nor excessive having regard to the subject matter of the inspection. In its control of the proportionality of the coercive measures, the national judicial authority may ask the Commission, directly or through the authority of the Member State** enforcing the rules referring to **Article 1(6), for detailed explanations in particular on the grounds the Commission has for suspecting infringement of this Regulation, as well as on the seriousness of the suspected infringement and on the nature of the involvement of the undertaking**

	concerned. However, the national judicial authority may not call into question the necessity for the inspection nor demand that it be provided with the information in the file of the Commission. The lawfulness of the Commission decision shall be subject to review only by the Court of Justice of the European Union. PT (Comments): PT believes that it is clearer to refer to "authority of the Member State enforcing the rules referred to in Article 1(6)", as already used in Article 32a(3). SE (Comments): The reference may be looked over.
Article 22 Interim measures	PT (Comments): PT agrees in general with the current draft of Article 22.

1. In case of urgency due to the risk of serious and irreparable damage for business users or end users of gatekeepers, the Commission may, by decision adopted in accordance with the advisory procedure referred to in Article 37a(2), order interim measures against a gatekeeper on the basis of a prima facie finding of an infringement of Articles 5 or 6.	FR (Drafting): 1. In case of urgency due to the risk of serious and ~~irreparable~~ **immediate** damage for business users or end users of gatekeepers, the Commission may, by decision adopted in accordance with the advisory procedure referred to in Article 37a(2), order interim measures against a gatekeeper on the basis of a prima facie finding of an infringement of Articles 5 or 6. FR (Comments): The urgency criterion is defined by a risk of serious and irreparable harm to business users or end-users. The experience of the Commission's practice under Regulation 1/2003 shows that the "irreparable harm" criterion imposes a very high standard that limits the use of provisional measures. The French authorities propose to lighten this standard by providing for an "immediacy" criterion.
2. A decision pursuant to paragraph 1 may only be adopted in the context of proceedings opened in view of the possible adoption of a decision of non-compliance pursuant to Article 25(1). This decision shall apply for a specified period of time and may be renewed in so far this is necessary and appropriate.	
	FR

	(Drafting): 3. In case of urgency due to the risk of serious and immediate damage for business users or end-users of gatekeepers, resulting from new practices implemented by one or several gatekeepers, that may undermine contestability of core platform services or may be unfair pursuant to Article 10(2), the Commission may, by decision adopted in accordance with the advisory procedure referred to in Article 37a(2), order interim measures on the concerned gatekeepers in order to avoid the materialization of the said risk. 4. A decision pursuant to paragraph 3 may only be adopted in the context of a market investigation pursuant to Article 17 and within 6 months of the opening of such an investigation. The interim measure shall apply for a specified period of time and, in any case, shall be replaced by the new obligations that may arise under the final decision resulting from the market investigation pursuant to Article 17. FR (Comments): In order to compensate for the lack of reactivity in the event that a gatekeeper implements a new practice that would run counter to the two principles set out in Article 10, it could be proposed, pending the conclusions of the in-depth market investigation (Article 17), to put in place a mechanism of interim measures that would enable provisional obligations to be imposed on the gatekeeper concerned. Indeed, in the case where the absence of regulation of a new practice could give rise to a risk of serious and immediate prejudice for business users or end users, it appears necessary to avoid the realization of this risk while the long investigation (24 months), aimed at imposing a new obligation in articles 5 and 6, is ongoing. The provisional measure would be adapted (necessary and proportionate) to the new situation found at the end of the first

	findings made in the investigation. They would be aimed solely at preventing serious and immediate injury and not at providing a permanent solution. The obligations of this provisional decision would be replaced by the definitive rule(s) applicable to several gatekeepers that may result from the decision resulting from the in-depth investigation, or they would simply be lifted without being replaced in the event that the in-depth investigation concludes that there is no need to add a new rule to the list of existing obligations (Articles 5 and 6).
Article 23 Commitments	PT (Comments): PT agrees in general with the current draft of Article 23.
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 37a(2) make those commitments binding on that gatekeeper and declare that there are no further grounds for action.	
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.	
Article 24 Monitoring of obligations and measures	
1. The Commission may take the necessary actions to monitor the effective implementation and compliance with the obligations laid down in Articles 5 and 6 and the decisions taken pursuant to Articles 7, 16, 22 and 23. **These actions may include in particular the imposition of an obligation on the gatekeeper to retain all documents deemed to be relevant to assess the gatekeepers' implementation of and compliance with these obligations and decisions.**	NL (Comments): We welcome this addition. DK (Drafting): The Commission may take the necessary actions to monitor the effective implementation and compliance with the obligations laid down in Articles 5 and 6 and the decisions taken pursuant to Articles 7, 16, 22 and 23. DK

	(Comments): We support the intent of this amendment. However, the change appears to have mostly an exemplificative nature, and it may be more relevant to include it in the corresponding recital. Therefore, we propose to delete the amendment from the text of the provision. Alternative remove the text to the recitals. LT (Comments): We could support the change. However, we do believe that from the legal point of view, it would be better to give *examples* of possible monitoring actions in the recitals.
2. The actions pursuant to paragraph 1 may include the appointment of independent external experts and auditors, ~~including~~**as well as** from competent authorities of the Member States, to assist the Commission to monitor the obligations and measures and to provide specific expertise or knowledge to the Commission.	DK (Drafting): The actions pursuant to paragraph 1 may include the appointment of independent external experts and auditors, to assist the Commission to monitor the obligations and measures and to provide specific expertise or knowledge to the Commission. 3. National authorities of Member States may assist the Commission in monitoring the implementation and compliance with the obligations contained in this Regulation.

	DK (Comments): We support the intention of the proposed change. We also believe it is necessary to include an additional paragraph where it is clarified that national authorities may assist the Commission in monitoring the implementation and compliance with the DMA. PT (Drafting): 2. The actions pursuant to paragraph 1 may include the appointment of independent external experts and auditors, ~~including~~**as well as** from authorities of the Member States enforcing the rules referred to in Article 1(6), to assist the Commission to monitor the obligations and measures and to provide specific expertise or knowledge to the Commission. PT (Comments): PT believes it is important to ensure that the Commission benefits from the experience of national competition authorities of obligations and measures taking into consideration the extent to which the obligations in Articles 5 and 6 are based in the experience gathered by the Commission

	through the enforcement of competition rules. FR (Drafting): 2. The actions pursuant to paragraph 1 may include the appointment of independent external experts and auditors, **including from national competition authorities**, to assist the Commission to monitor the obligations and measures and to provide specific expertise or knowledge to the Commission. LT (Comments): We support the change.
	FR (Drafting): Article 24a : Reporting mechanism for business users and end-users 1. Business users, competitors and end-users of the core platform services pursuant Article 2(2) may report to the Commission any gatekeepers' practice or behaviour that falls into the scope of the present Regulation. The Commission shall give access the reports to the Member States.

	2. The Commission shall define the conditions under which the reports mentioned in paragraph 1 are addressed to it. The Commission shall also define the conditions under which the Member States are informed of such reports and have access to them. 3. The Commission shall have the power to set its priorities for the task of examining the reports mentioned in paragraph 1. Subject to the provisions of present paragraph 5 and Article 33, the Commission shall have the power not to examine a report on the grounds that it does not consider such report to be an enforcement priority. 4. When the Commission considers that a report is an enforcement priority, it may open a proceeding pursuant to Article 18 or a market investigation pursuant to Article 14. 5. Without prejudice of Article 33, a Member State may request the Digital Markets Advisory Committee to adopt an opinion in order to determine if one or several reports should be considered an enforcement priority. The opinion may request the Commission to open a proceeding pursuant to Article 18 or a market investigation pursuant to Article 14. The Advisory Committee adopts an opinion within [1 month]. In its opinion, it shall state the reasons why the report is considered to be, or not to be, an enforcement priority. The Commission shall within four months examine whether there are reasonable grounds to open such a proceeding or investigation. Where the Commission does not comply with the request of the Advisory Committee, it shall state the reasons for not initiating a procedure under Article 18 or a market investigation under Article 14. FR (Comments): At many occasions, the French authorities stressed on the point that, to

	insure an effective enforcement of the DMA, the resources of the Commission should be supported by any available and relevant capacities, one major of those consisting in the contribution of market actors directly confronted with gatekeepers. As a consequence, French authorities do call for a reinforced involvement of third parties, actors and stakeholders in the implementation of the DMA, especially in their role to alert the Commission and give feedback on the implementation of the regulation by gatekeepers. This request is also expressed by many actors from different sectors, which argue for a formal implication of third parties to help the Commission in its enforcement power. The French Authorities think that one way of strengthening the capacities of the Commission to effectively enforce the DMA in line with the reality of markets and businesses is to introduce an operational mechanism to involve stakeholders such as business users and end-users in the implementation of the regulation. By providing to the Commission useful information about gatekeepers' practices and markets' realities and changes, it will contribute to reduce information asymmetries between the Commission and the gatekeepers. It is a priority for the French authorities to ensure an effective application of the DMA and they propose in that sense the following amendment creating a reporting mechanism on the practices and behaviours of the gatekeepers, to complete the DMA in proper coherence with the current tools and Commission's powers. First, the reporting mechanism is open to business users and end-users allowing them to report to the Commission and competent national authorities, gatekeepers' practices and behaviours that fall into the scope of the regulation or may be considered to infringe the compliance with it. The proposed mechanism is fully articulated with the existing tools and powers for implementing the DMA since issues raised by business users or end-users through the reporting mechanism are duly planned to support and optimize all existing implementation tools of the DMA (market investigation, interim measures, fines, regulatory dialogue, etc.). For example, these reports could be used to support the Commission in taking a specification decision of any obligations within the regulatory dialogue

	with a gatekeeper pursuant to Article 7 or to alert the Commission on a potential new provider of core platforms services that should be designated as gatekeeper. On the contrary, this reporting mechanism is not intended to provide individualised settlement of claims made by business users and end-users against gatekeepers. Also, it is important to stress that the business users and end-users' reporting mechanism must not overburden the Commission and in that sense, the following amendment is clearing the principle that the Commission would have full discretion to give or not any follow-up to the reports. Second, the amendment proposes to associate more directly Member States; indeed, reports from business users and end-users should be made available to Member States. Member States may consider such reports to request the Commission, pursuant to Article 33, to open markets investigations. Also, Member States may consider such reports to request the Digital Markets Advisory Committee to adopt an opinion, for the Commission to reconsider application of Article X(4), in particular with respect to the opening of proceedings pursuant to Article 18. Details on the implementation of the business users and end-users' reporting mechanism could be established in an implementing act adopted by the Commission (Article 36).
Article 25 Non-compliance	PT (Comments): PT agrees in general with the current draft of Article 25.
1. The Commission shall adopt a non-compliance decision in	

accordance with the advisory procedure referred to in Article 37a(2) where it finds that a gatekeeper does not comply with one or more of the following:	
(a) any of the obligations laid down in Articles 5 or 6;	
(b) measures specified in a decision adopted pursuant to Article 7(2);	
(c) measures ordered pursuant to Article 16(1);	
	NL (Drafting): (c2) tailor-made obligations specified in a decision pursuant to Article 16a
(d) interim measures ordered pursuant to Article 22; or	
(e) commitments made legally binding pursuant to Article 23.	
2. Before adopting the decision pursuant to paragraph 1, the Commission shall communicate its preliminary findings to the gatekeeper concerned. In the preliminary findings, the Commission shall explain the measures it considers to take or it considers that the gatekeeper should take in order to effectively address the preliminary findings.	
	FR (Drafting):

	2.(bis) In view of adopting the decision under paragraph 1, the Commission may take into account the information provided by interested third parties, in accordance with Article 24a. FR (Comments): Consistant with the French authorities proposal of a reporting mechanism under Article 24a.
3. In the non-compliance decision adopted pursuant to paragraph 1, the Commission shall order the gatekeeper to cease and desist with the non-compliance within an appropriate deadline and to provide explanations on how it plans to comply with the decision.	
4. The gatekeeper shall provide the Commission with the description of the measures it took to ensure compliance with the non-compliance decision adopted pursuant to paragraph 1.	
5. Where the Commission finds that the conditions of paragraph 1 are not met, it shall close the investigation by a decision.	
Article 26 Fines	PT (Comments): PT agrees in general with the current draft of Article 26.
1. In the decision pursuant to Article 25, the Commission may impose on a gatekeeper fines not exceeding 10% of its total worldwide	

turnover in the preceding financial year where it finds that the gatekeeper, intentionally or negligently, fails to comply with:	
(a) any of the obligations pursuant to Articles 5 and 6;	
(b) the measures specified by the Commission pursuant to a decision under Article 7(2);	
(c) measures ordered pursuant to Article 16(1);	
	NL (Drafting): (c2) tailor-made obligations specified in a decision pursuant to Article 16a
(d) a decision ordering interim measures pursuant to Article 22; **or**	DK (Comments): We support the amendment.
(e) a commitment made binding by a decision pursuant to Article 23.	
	FR (Drafting): (f) the obligations to provide within the time-limit information that is

	required for assessing their designation as gatekeepers pursuant to Article 3(2) or supply incorrect, or misleading information. FR (Comments): The French authorities wish to strengthen the penalty for failure to notify the crossing of the thresholds referred to in Article 3(2) to make it more dissuasive. As the text currently stands, the fine is the same as that for incomplete information (1 % of total turnover), even though these two violations are not as serious.
2. The Commission may by decision impose on -undertakings and associations of undertakings fines not exceeding 1% of their total **worldwide** turnover in the preceding financial year where they intentionally or negligently:	DK (Comments): We support the amendment. LT (Comments): We support the amendment.
(aa) fail to comply with the obligation to notify the Commission according to Article 3(3);	
(a) fail to provide within the time-limit information that is required for assessing their designation as gatekeepers pursuant to Article 3(2) or	

supply incorrect, incomplete or misleading information;	
(b) fail to notify information or supply incorrect, incomplete or misleading information that is required pursuant to Article 12;	
(c) fail to submit the description or supply incorrect, incomplete or misleading information that is required pursuant to Article 13;	
(d) fail to supply or supply incorrect, incomplete or misleading information or explanations that are requested pursuant to Articles 19 or Article 20;	
(e) fail to provide access to data-bases and algorithms pursuant to Article 19;	
(f) fail to rectify within a time-limit set by the Commission, incorrect, incomplete or misleading information given by a representative or a member of staff, or fail or refuse to provide complete information on facts relating to the subject-matter and purpose of an inspection, pursuant to Article 21;	
(g) refuse to submit to an on-site inspection pursuant to Article 21-**;**	
(h) fail to comply with the measures adopted by the Commission pursuant to Article 24; or	LT (Comments): We support the proposed amendments.

(i) fail to comply with the conditions for access to the Commission's file pursuant to Article 30(4) and 30(5).	DK (Comments): We support the proposed amendments. AT (Comments): It is referred here zu Art. 30 (5), even tough Art. 30 does not have a paragraph 5. SE (Comments): The reference to article 30 (5) may be looked over. LT (Comments): We support the proposed amendments. Technical remark: Art 30 only has 4 parts (not 5). Therefore it might be necessary to delete "**and 30(5)**."
3. In fixing the amount of the fine, regard shall be had to the gravity, duration, recurrence, and, for fines imposed pursuant to paragraph 2, delay caused to the proceedings.	

4. When a fine is imposed on an association of undertakings taking account of the **worldwide** turnover of its members and the association is not solvent, the association shall be obliged to call for contributions from its members to cover the amount of the fine.	DK (Comments): We support the proposed amendment. LT (Comments): We support the proposed amendment.
Where such contributions have not been made to the association of undertakings within a time-limit set by the Commission, the Commission may require payment of the fine directly by any of the undertakings whose representatives were members of the decision-making bodies concerned of the association.	
After having required payment in accordance with the second subparagraph, the Commission may require payment of the balance by any of the members of the association of undertakings, where necessary to ensure full payment of the fine.	
However, the Commission shall not require payment pursuant to the second or the third subparagraph from undertakings which show that they have not implemented the infringing decision of the association of undertakings and either were not aware of its existence or have actively distanced themselves from it before the Commission opened proceedings under Article 18.	
The financial liability of each undertaking in respect of the payment of the	

fine shall not exceed 10 % of its total worldwide turnover in the preceding financial year.	
Article 27 Periodic penalty payments	PT (Comments): PT agrees in general with the current draft of Article 27.
1. The Commission may by decision impose on undertakings, including gatekeepers where applicable, and association of undertakings periodic penalty payments not exceeding 5 % of the average daily worldwide turnover in the preceding financial year per day, calculated from the date set by that decision, in order to compel them:	
(a) to comply with the decision pursuant to Article 16(1);	
(b) to supply correct and complete information within the time limit required by a request for information made by decision pursuant to Article 19;	
(c) to ensure access to data-bases and algorithms of undertakings and to supply explanations on those as required by a decision pursuant to Article 19;	
(d) to submit to an on-site inspection which was ordered by a decision taken pursuant to Article 21;	
(e) to comply with a decision ordering interim measures taken pursuant to Article 22(1);	

(f) to comply with commitments made legally binding by a decision pursuant to Article 23(1);	
(g) to comply with a decision pursuant to Article 25(1).	
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 37a(2) set the definitive amount of the periodic penalty payment at a figure lower than that which would arise under the original decision.	ES (Drafting): *Deletion* ES (Comments): It is not clear whether this provision is intended to correct practical errors/misfits in the calculation of the periodic penalty or to introduce incentives for the gatekeeper. If the aim is the latter, the existence of periodic penalties should be enough to incentive the cessation of the practice.
Article 28 Limitation periods for the imposition of penalties	PT (Comments): PT agrees in general with the current draft of Article 28.

1. The powers conferred on the Commission by Articles 26 and 27 shall be subject to a ~~three~~ **five** year limitation period**, with the exception of the case of infringements of provisions concerning requests for information, pursuant to Article 19, powers to conduct interviews and take statements, pursuant to Article 20, or the conduct of inspections, pursuan to Article 21, where such limitation period shall be subject to three year limitation period**.	BE (Drafting): 1. The powers conferred on the Commission by Articles 26 and 27 shall be subject to a ~~three~~ **five** year limitation period**, with the exception of the case of infringements of provisions concerning requests for information, pursuant to Article 19, powers to conduct interviews and take statements, pursuant to Article 20, or the conduct of inspections, pursuant to Article 21, where such limitation period shall be subject to three year limitation period**. DK (Comments): We notice that the provision establishes two different limitation periods for the infringement of Articles 19, 20 and 21. We would like to better understand the rationale for such a differentiation before providing our position on this amendment. DE (Comments): We welcome the extension of the limitation period. PT (Drafting):

	1. The powers conferred on the Commission by Articles 26 and 27 shall be subject to a ~~three~~ **five** year limitation period**, with the exception of the case of infringements of provisions concerning requests for information, pursuant to Article 19, powers to conduct interviews and take statements, pursuant to Article 20, or the conduct of inspections, pursuant to Article 21, where such powers shall be subject to a three year limitation period**. LT (Comments): We could support the change.
2. Time shall begin to run on the day on which the infringement is committed. However, in the case of continuing or repeated infringements, time shall begin to run on the day on which the infringement ceases.	
3. Any action taken by the Commission for the purpose of a market investigation or proceedings in respect of an infringement shall interrupt the limitation period for the imposition of fines or periodic penalty payments. The limitation period shall be interrupted with effect from the date on which the action is notified to at least one undertaking or association of undertakings which has participated in the infringement. Actions which interrupt the running of the period shall include in particular the following:	
(a) requests for information by the Commission;	

(b) written authorisations to conduct inspections issued to its officials by the Commission ;	
(c) the opening of a proceeding by the Commission pursuant to Article 18.	
4. Each interruption shall start time running afresh. However, the limitation period shall expire at the latest on the day on which a period equal to twice the limitation period has elapsed without the Commission having imposed a fine or a periodic penalty payment. That period shall be extended by the time during which limitation is suspended pursuant to paragraph 5.	
5. The limitation period for the imposition of fines or periodic penalty payments shall be suspended for as long as the decision of the Commission is the subject of proceedings pending before the Court of Justice of the European Union.	
Article 29 Limitation periods for the enforcement of penalties	PT (Comments): PT agrees in general with the current draft of Article 29.
1. The power of the Commission to enforce decisions taken pursuant to Articles 26 and 27 shall be subject to a limitation period of five years.	
2. Time shall begin to run on the day on which the decision becomes final.	
3. The limitation period for the enforcement of penalties shall be	

interrupted:	
(a) by notification of a decision varying the original amount of the fine or periodic penalty payment or refusing an application for variation;	
(b) by any action of the Commission or of a Member State, acting at the request of the Commission, designed to enforce payment of the fine or periodic penalty payment.	
4. Each interruption shall start time running afresh.	
5. The limitation period for the enforcement of penalties shall be suspended for so long as:	
(a) time to pay is allowed;	
(b) enforcement of payment is suspended pursuant to a decision of the Court of Justice of the European Union or to a decision by a national court.	ES (Drafting): (b) enforcement of payment is suspended pursuant to a decision of the Court of Justice of the European Union **~~or to a decision by a national court.~~** ES (Comments): The role of national courts in the enforcement of the DMA should be clarified.

Article 30 Right to be heard and access to the file	PT (Comments): PT agrees in general with the current draft of Article 30. SE (Comments):
	LV (Drafting): **<u>If the Commission considers it necessary, it may also hear other natural or legal persons before taking the decisions as provided for in paragraph 1. Applications to be heard on the part of such persons shall, where they show a sufficient interest, be granted. The Member State authorities designated under Article 21a may also ask the Commission to hear other natural or legal persons with sufficient interest.</u>** LV (Comments): *New paragraph* *It is essential that third parties, including consumer representatives, with a sufficient interest in the decision set out in Article 30 (1) be heard before the Commission takes such decisions. Only hearing the gatekeepers in*

	these cases cannot lead to the best outcomes for contestability and fairness of markets.
1. Before adopting a decision pursuant to Article 7, Article 8(1), Article 9(1), Articles 15, 16, 22, 23, 25 and 26 and Article 27(2), the Commission shall give the gatekeeper or undertaking or association of undertakings concerned the opportunity of being heard on:	
(a) preliminary findings of the Commission, including any matter to which the Commission has taken objections;	
(b) measures that the Commission may intend to take in view of the preliminary findings pursuant to point (a) of this paragraph.	
2. Gatekeepers, undertakings and associations of undertakings concerned may submit their observations to the Commission's preliminary findings within a time limit which shall be fixed by the Commission in its preliminary findings and which may not be less than 14 days.	DE (Drafting): 2. Gatekeepers, undertakings and associations of undertakings concerned may submit their observations to the Commission's preliminary findings within a time limit which shall be fixed by the Commission in its preliminary findings and which may not be less than 14 days. If the Commission considers it necessary, it may also hear any natural or legal person who shows a sufficient interest and applied to be heard. DE (Comments): The drafting of this article seems to be based on Article 27 of the

	Regulation 1/2003. However, in its current version, the DMA does not grant, in contrast to the Regulation, the exercise of a right to be heard to all interested third parties with a legitimate interest who so demand. FR (Drafting): **2.** Gatekeepers, undertakings and associations of undertakings concerned may submit their observations to the Commission's preliminary findings within a time limit which shall be fixed by the Commission in its preliminary findings and which may not be less than 14 days. If the Commission considers it necessary, it may also hear any natural or legal person who shows a sufficient interest and applied to be heard. FR (Comments): The drafting of this article establishing the rights to be heard and to access the file is based on Article 27 of the Regulation 1/2003. However, in its current version, the DMA does not grant, as does that Regulation, the exercise of a right to be heard to all interested third parties with a legitimate interest who so demand. LV

	(Drafting): 2. Gatekeepers, undertakings and associations of undertakings concerned **and interested third persons** may submit their observations to the Commission's preliminary findings within a time limit which shall be fixed by the Commission in its preliminary findings and which may not be less than 14 days. LV (Comments): *It is essential that third parties, including consumer representatives, with a sufficient interest in the decision set out in Article 30 (1) be heard before the Commission takes such decisions. Only hearing the gatekeepers in these cases cannot lead to the best outcomes for contestability and fairness of markets.*
3. The Commission shall base its decisions only on objections on which gatekeepers, undertakings and associations of undertakings concerned have been able to comment.	LV (Drafting): 3. The Commission shall base its decisions only on objections on which gatekeepers, undertakings and associations of undertakings concerned **and interested third persons** have been able to comment. LV

	(Comments): *It is essential that third parties, including consumer representatives, with a sufficient interest in the decision set out in Article 30 (1) be heard before the Commission takes such decisions. Only hearing the gatekeepers in these cases cannot lead to the best outcomes for contestability and fairness of markets.*
4. The rights of defence of the gatekeeper or undertaking or association of undertakings concerned shall be fully respected in any proceedings. The gatekeeper or undertaking or association of undertakings concerned shall be entitled to have access to the Commission's file under ~~the~~ terms of ~~a negotiated~~ disclosure, subject to the legitimate interest of undertakings in the protection of their business secrets. **The Commission shall have the power to issue decisions setting out such terms of disclosure in case of disagreement between the parties.** The right of access to the file **of the Commission** shall not extend to confidential information and internal documents of the Commission or the competent authorities of the Member States. In particular, the right of access shall not extend to correspondence between the Commission and the competent authorities of the Member States. Nothing in this paragraph shall prevent the Commission from disclosing and using information necessary to prove an infringement.	DK (Comments): We support the amendments. IE (Drafting): The rights of defence of the gatekeeper or undertaking or association of undertakings concerned shall be fully respected in any proceedings. The gatekeeper or undertaking or association of undertakings concerned shall be entitled to have access to the Commission's file under ~~the~~ terms of ~~a~~ negotiated disclosure, subject to the legitimate interest of undertakings in the protection of their business secrets. IE

	(Comments): IE appreciates the balance sought here but deletion of the word 'negotiated' could be interpreted as significantly weakening the gatekeepers influence over the terms of its access to the Commission's file. LT (Comments): We support the amendments.
	LV (Drafting): **5. Natural or legal persons who can show a legitimate interest shall be entitled to lodge complaints with regard to the non-designation of gatekeepers and non-compliance and systematic non-compliance by gatekeepers with their obligations under this Regulation.** LV (Comments): *New paragraph* *Third parties should be entitled to lodge formal complaints about gatekeepers' non-compliance with their obligations under this Regulation. The suggested amendment mirrors third party rights under Regulation*

	1/2003 (Article 7) in antitrust enforcement.
Article 31 Professional secrecy	PT (Comments): PT agrees in general with the current draft of Article 31.
1. The information collected pursuant to ~~Articles 3, 13, 19, 20 and 21~~**this Regulation** shall be used only for the purposes of this Regulation.	NL (Comments): It seems like this formulation contradicts the sharing of information collected pursuant to article 12. DK (Comments): We support this amendment. DE (Drafting): 1. The information collected pursuant to ~~Articles 3, 13, 19, 20 and 21~~**this Regulation** shall be used only for the purposes of this Regulation, Regulation (EU) [DSA] and competition law investigations. DE

	(Comments): Information collected during the enforcement procedure of the DMA should generally be used in competition law cases. Both proceedings could be pursued in parallel, as the DMA is without prejudice to Art. 101, 102 TFEU. As addressees and the investigated behaviour could be identical insofar as potential anti-competitive unilateral behaviour is concerned, the usage is necessary to allow for an effective enforcement of both regimes. SE (Comments): SE would appreciate an explanation of the practical consequences of the amendments. FR (Drafting): The information collected pursuant to Articles 3, 12, 13, 19, 20 and 21 shall be used only for the purposes of this Regulation **and competition law enforcement**. LT (Comments):

	We support this amendment. SK (Comments): We would support **to extend the exchange of information obtained in the course of supervision also with national supervisory authorities** (f.ex. national/or EU data authorities), which could use these information supporting their own activities (e.g in monitoring of the fulfilment of obligations in relation to personal data)/But we take note of the EC´s explanation on the proportionality and intensive exchange of information of the EC, with competition authorities of the MSs).
1a. The information collected pursuant to Article 12 shall be used only for the purposes of this Regulation ~~and~~**,** Regulation (EC) No. 139/2004 **and national merger rules**.	FI (Comments): The wording of this paragraph seems to contradict para 1. FI highlights the fact that the proposal for using the information collected pursuant to Article 12 for the purposes of Regulation (EC) No. 139/2004 (legal basis of which are Articles 103 and 352 TFEU) will significantly widen the use of information collected according the DMA, which in turn has Article 114 TFEU as its legal basis. FI has some reservations regarding the use of the information gathered under Article 12 also in the context of national merger rules.

	BE (Comments): **BE:** Is there still a need for the new article 31.1a taken into account that paragraph 4 of article 32a now indicates that the information exchanged pusuant to paragraph 3 can be exchanged for the enforcement of the rules refered to in article 1(6). This article 1 (6) refers to the Merger Regulation as well. DK (Comments): We support this amendment. AT (Comments): We welcome this amendment. DE (Comments): We welcome the proposed amendment. LU (Drafting):

	1a. The information collected pursuant to Article 12 shall be used only for the purposes of this Regulation ~~and~~**,** ~~Regulation (EC) No. 139/2004 and national merger rules~~. LU (Comments): National merger rules are out of scope of the DMA and could relate to any situation beyond digital markets or gatekeepers. Any information collected under the DMA shall only be used for the purposes of the DMA. Therefore this addition is not proportionate (and not coherent with paragraph 1). In any case, national authorities will already be informed on DMA-relevant concentrations by the Commission pursuant to Article 12(4). With the same logic, we believe that information collected under the DMA should only be used for the purposes of the DMA, and not serve other legislations such as Regulation 139/2004. PT (Comments): PT welcomes the addition of paragraph 1a and the changes proposed allowing for the use of the information collected pursuant to Article 12 for the purposes of the EUMR, which is relevant for referral requests under Article 22 EUMR, and national merger rules.

	LT (Comments): We support this amendment.
2. Without prejudice to the exchange and to the use of information provided for the purpose of use pursuant to Articles ~~37a~~**32a, 33** and ~~33~~**37a**, the Commission, the authorities of the Member States, their officials, servants and other persons working under the supervision of these authorities and any natural or legal person, including auditors and experts appointed pursuant to Article 24(2), shall not disclose information acquired or exchanged by them pursuant to this Regulation and of the kind covered by the obligation of professional secrecy. ~~This obligation shall also apply to all representatives and experts of Member States participating in any of the activities of the Digital Markets Advisory Committee pursuant to Article 37a.~~	DK (Comments): We support this amendment. LT (Comments): We support this amendment.
Article 32a Cooperation and coordination	NL (Comments): We welcome this article in principle, but would rather have it replaced by the coordination and cooperation mechanism proposed by France, Germany and ourselves. A proposal for this is included at the end of this text (without prejudice to where in the text it should actually be placed) PT

	(Comments): PT agrees with the current draft of Article 32a, which provides an appropriate framework for coordination between the Commission and Member States, including national competition authorities. ES (Comments): The DMA proposal establishes different kinds of coordination, cooperation and participation of Member States (i.e. a coorperation more focus on competition issues -art.1.6-, and a wider cooperation -art. 1.5-). This would affect to the nature of the cooperation (technical vs political) and also to the bodies involved. Due to that, the coordination mechanisms should be sufficiently flexible for Member States to decide the representation required in the possible mechanisms. SE (Comments): According to the Swedish position, approved by the Swedish Parliament, the Commission will be best placed to be the enforcer of DMA, since the services have a cross-border nature. The Commission´s role as the supervisory authority of the regulation could be expressely stated in the regulation. According to the position of SE, national authorities should assist the Commission to the extent set out in the Commission's proposal. It is important that the resources of national authorities are not used more than is necessary in the Commission´s enforcement of DMA.

	If there should be support in the working group for including the provision in the proposal, SE has the following comments, see below: According to SE, a new proposal with extended tasks for national authorities must be accompanied with a complementary impact assessment, in line with p. 15 of the Interinstitutional Agreement of 13 April 2016 on better regulation under which the European Parliament and the Council, when they consider it appropriate and necessary for the legislative process, will carry out impact assessments of significant amendments to the Commission's proposal.The precise role of the national authorites in relation to the Commission, both with regard to national competition authorities and with regard to competent national authorities in general, should be specified. The relation between article 32a and articles 1.6, 1.7, 19.6, 38.3 and the articles in which a reference to article 1 (6) is added in the compromise proposal might be looked over and coordinated in the view of clarity of the roles of the respective authorites. SK (Comments): We still maintain our general comments on cooperation and coordination of MSs and EC in supervision and enforcement of the DMA Regulation. We agree with the best possible and efficient exchange of information between the EC and MSs and their opportunity to express on the activities and enforcement of the EC. But the EC must still remain the sole enforcer of the DMA with a clear

	leading role. **We suggest to include this aspect directly into the Regulation.** For smaller MSs like SK, complications could be experienced while applying the DMA (due to lack of experiences and capacities/experts, with financial or administrative obstacles). Hence, it is essential for us that the degree of involvement of MS authorities / institutions in cooperation and coordination in enforcing the Regulation (in all contexts) remains flexible, in regard of the individualized conditions of the MSs). The implementation of the regulation should be in the responsibility (in its entirety) on the apparatus of the EC, we prefer the existence of one harmonized regulatory framework over all GKs. In this context, we would welcome more clarifications on the type of involvement of MS bodies / institutions and on the form of exchange of information within the Committee.
1. The Commission and Member States shall work in close cooperation and coordinate their enforcement actions to ensure coherent, effective and complementary enforcement of available legal instruments applied to gatekeepers within the meaning of this Regulation.	BE (Comments): **Belgium** supports the choice for enforcement at European level. Gatekeeper platforms are active across national borders and this requires a supranational and harmonized approach. However we welcome that the DMA now provides that member states can assist the Commission in their investigative powers. We are in general in favor of a stronger supporting role for the Member

	States. We support thus the creation of an advisory board which could be consulted in an organized way on more general issues. We think constant interaction with national players and users and continuously monitoring of markets and innovations is crucial, as well as compliance with the obligations. We believe use should be made of the existing sound technical expertise at the national level to support the European Commission with independent and technical knowledge. The independent advisory board should be composed of National Independent Authorities such as for example telecom, privacy, competition -and consumer authorities. The board would complement the DMAC to provide independent and technical expertise with a light structure and rely on national experts organized in working groups in which experts from various institutions can work together and shape positions on different issues. We therefore support the amendments proposed by Schwab in the new articles 31a and 31b. On the question of the Commission on how this high level group could be operational we refer to article 31a, paragraph 3 where it is indicated that this group can be organized into expert working groups building cross-

	regulator specialist teams that provide the COM with high level of expertise. DK (Drafting): 1. The Commission and Member States shall work in close cooperation and coordinate their enforcement actions to ensure coherent, effective and complementary enforcement of available legal instruments applied to gatekeepers within the meaning of this Regulation. When the present Regulation so establishes, Member States shall ensure human, financial, technical and technological resources necessary to perform such enforcement actions. DK (Comments): We propose to make an amendment to this provision. In particular, we believe that similarly to the ECN+, NCAs should have sufficient resources, in terms of qualified staff able to conduct proficient legal and economic assessments, financial means, technical and technological expertise and equipment including adequate information technology tools, to ensure they are able to perform their tasks (e.g. supporting role during

	investigations and inspections) effectively LT (Drafting): 1. The Commission and Member States shall work in close cooperation and coordinate their enforcement actions to ensure coherent, effective and complementary enforcement of available legal instruments applied to gatekeepers within the meaning of this Regulation. **When the present Regulation so establishes, Member States shall ensure human, financial, technical and technological resources necessary to perform such enforcement actions.** LT (Comments): LT: Justification: Even with a moderate and voluntary involvement of MSs in the enforcement of the DMA, there is a need to ensure that NCA and other national enforcement authorities could perform their tasks timely and efficiently. MS should not be placed into a situation, when it has to refrain from using the possibilities offered by DMA only because of the lack of available resources. Therefore, it would be helpful in the DMA to have a legal ground which could be used by NCAs and other national enforcing authorities to secure necessary resources for implementation of the new functions, i.e., Art. 21 participating in inspections; Art. 24 assisting the

	COM to monitor the DMA obligations and measures, provide specific expertise or knowledge; Art. 32a closely cooperate with COM while *supporting* market investigations. Suggested provision would be similar to already existing in ECN+ directive 2019/1, e.g. recitals 24 , 25 , 26 and Art 5. SK (Comments): **Our priority for the DMA proposal is to maintain the exclusive competence of the EC in relation to the application of DMA and to avoid possible differences in approach between Member States and thus fragmentation of application or enforcement as well as harmonization of the digital internal market.** We are open and willing to contribute to the coordination of enforcement activities of the EC and render our assistance where necessary and possible (within Committee procedures, exchange of information, monitoring of the GC etc.)
2. National authorities shall not take decisions which run counter to a decision adopted by the Commission under this Regulation.	PT (Comments): PT agrees with the current draft of this provision but invites a further clarification in the Recitals concerning the notion of "running counter" to

	a decision in order to ensure legal certainty.
3. The Commission and the competent authorities of the Member States enforcing the rules referred to in Article 1(6) shall have the power to provide one another with any matter of fact or of law, including confidential information.	BE (Drafting): 3. The Commission and the competent authorities of the Member States enforcing the rules referred to in Article 1(6) shall have the power to provide one another with any matter of fact or of law, including confidential information. The Commission shall inform these authorities of requests or ex officio decisions to open a DMA enforcement procedure or market investigation and of decisions in application of the Chapters IV and V. BE (Comments): **BE :**Due to the fact that the same undertakings can be the object of DMA enforcement procedures and competition law cases, we believe we need a stronger concertation mechanism than what is provided for in the new article 32a,3 between the NCA's and the team(s) in charge in the Commission of the implementation of the DMA and of the articles 101 and 102 TFEU. This in order to ensure a coherent interpretation and application of competition law with regard to designated gatekeepers that are involved in DMA enforcement procedures and in competition law cases dealt with by NCAs or the DG Competition, and with regard to designated gatekeepers and other undertakings. We thus support the adding of the specification in article 32a.3 that the COM shall inform these authorities of 'requests or ex officio decisions to

	open a DMA enforcement procedure or market investigation and of decisions in application of the Chapters IV and V of the DMA'. DK (Drafting): 3. The Commission and the competent authorities of the Member States, including competition, data protection and consumer authorities, shall have the power to provide one another with any matter of fact or of law, including confidential information. DK (Comments): On this point, we propose to enable the exchange of information also in case of authorities other than NCAs (e.g. data protection or consumer authorities). Therefore, we suggest deleting reference to Article 1(6), since it could unduly narrow the scope of application of the provision. AT (Drafting): The Commission and the competent authorities of the Member States enforcing the rules **that may overlap with the obligations set out in this Regulation** ~~referred to in Article 1(6)~~ shall have the power to provide one

	another with any matter of fact or of law, including confidential information. AT (Comments): As stated before, we are of the opinion that a reference to Art. 1 (6) is not sufficient in this regard, since this primarly refers to competition law. Also other areas may overlap with the obligations set out in the DMA, e.g. data protection, telecom law. SE (Drafting): Without predjudice to Article 28 of Council regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, the Commission and the competent authorities of the Member States enforcing the rules referred to in Article 1(6) shall have the power to provide one another with any matter of fact or of law, including confidential information. SE (Comments): It should be clarified in the regulation how this provision relates to Article

	28 of Regulation 1/2003 on professional secrecy. The suggested amendment clarifies that the rules on professional secrecy in Article 28 would not constitute an obstacle to the exchange of information.
4. Information exchanged pursuant to paragraph 3 shall only be exchanged and used for the purpose of coordination of the enforcement of this Regulation and the rules referred to in ~~Article 1(6).~~**paragraph 3.**	FI (Comments): A technical note on the wording of paras 4 and 6: FI considers that these paras should refer to Article 1(6) as they previously did, since the para 3 of the article does not actually refer to any particular rules. BE (Comments): **BE:** Is there still a need for the new article 31.1a taken into account that this paragraph 4 now indicates that the information exchanged pusuant to paragraph 3 can be exchanged for the enforcement of the rules refered to in article 1(6). This article 1 (6) refers to the Merger Regulation as well. DK (Drafting): Information exchanged pursuant to paragraph 3 shall only be exchanged and used for the purpose of coordination of the enforcement of this Regulation and in respect of the subject-matter for which it was collected

	by the transmitting auhtority. SE (Drafting): Information exchanged pursuant to paragraph 3 shall only be exchanged and used for the purpose of coordination of the enforcement of this Regulation and the rules referred to in ~~Article 1(6).~~**paragraph 3.** SE (Comments): It should be clarified in the Regulation how this provision relates to the regulatory framework on which supervision by the various authorities is based. For example, there may be provisions that information may only be used for the purpose of applying the relevant regulatory framework, as in Article 12 (2) of Regulation 1/2003. It is also unclear from a linguistic point of view what "the rules referred to in paragraph 3" are. Is this meant to refer to the competition rules as referred to in article 1(6)? If so, it may be more clear to refer to that provision, as previously done. LT (Comments):

	We support this amendment. SK (Drafting): Information exchanged pursuant to paragraph 3 shall only be exchanged and used for the purpose of coordination of the enforcement of this Regulation and the rules referred to in **Article 1(6).~~paragraph 3.~~** SK (Comments): We prefer the original proposal on the legal basis.
4**5**. The Commission may ask competent authorities of the Member States to support any of its market investigations pursuant to this Regulation.	SE (Comments): According to SE the proposal for this paragraph is very broad and unprecise. According to SE, support should be limited to cases where the Commission consider it *necessary* to be given support about *knowledge and experience of national markets*. The proposal should also be more precise with regard to what parts of the market investigations such support is expected to be given and in what format. It should also be expressed that the competent authorities of the Member States *may* give such support to the extent that is possible with regard to its state of resources. See also comment above under the headline.

	IE (Comments): IE request further clarity here particularly in terms of the frequency and nature of market investigation assistance, and consequently the resource implications for national competent authorities. LT (Drafting): 5. The Commission may ask competent authorities of the Member States to support any of its market investigations pursuant to this Regulation. **Such support shall be limited to the provision of information already possessed or readily accessible by the competent authorities of the Member States, and not extended to requests of producing or collecting new information.** LT (Comments): The word "support" is not clearly defined and cannot be interpreted as only *voluntary* engagement of the MS. For this reason, we propose to limit the *support* to only submitting (exchanging of) an information that is already available to or easily accessible by the MS, and not requiring MS

	to engage in collecting or producing new information that could require significant resources on the MS's side. SK (Comments):
	SE (Drafting): 5a.
6. The competent authorities of the Member States enforcing the rules referred to in ~~Article 1(6)~~ **paragraph 3** may consult the Commission on any matter relating to the application of this Regulation.	FI (Comments): A technical note on the wording of paras 4 and 6: FI considers that these paras should refer to Article 1(6) as they previously did, since the para 3 of the article does not actually refer to any particular rules. DK (Drafting): 6. The competent authorities of the Member States referred to in

	~~Article 1(6)~~ **paragraph 3** may consult the Commission on any matter relating to the application of this Regulation. SE (Comments): SE wonders why this possibility should be limited to competition authorities, given that all MS authorities are referred to in p. (1) and (2). It is also unclear from a linguistic point of view what "the rules referred to in paragraph 3" are. Is this meant to refer to the competition rules as referred to in article 1(6)? If so, it may be more clear to refer to that provision, as previously done. SK (Drafting): The competent authorities of the Member States enforcing the rules referred to in **Article 1(6)** ~~**paragraph 3**~~ may consult the Commission on any matter relating to the application of this Regulation. SK (Comments): We prefer the original proposal on the legal basis.
	IE

	(Drafting): ***7. Member States shall ensure that their competent national authorities have the human, financial and technical resources that are necessary for the effective performance of their duties pursuant to this Regulation;*** SK (Drafting):
Article 32b **Cooperation with national courts**	FI (Comments): FI highlights that it is important to ensure that the goal of the Regulation to harmonize the legislation in the Member States is met. Hence, the role of national courts should be clearly defined in a way that the Commission remains as the sole enforcer of the DMA. Consequently, the relationship between the proposed Article 32b and national systems needs to be clear. DK (Comments): We are currently analyzing the changes included in this provision, and more generally, the role of national courts in enforcing the DMA. Therefore, we have a scrutiny reservation and may propose further adjustments at a later stage. However, we understand that the purpose of the article is (as stated in

	recital 75a) that all decisions taken by the Commission under this Regulation are subject to review by the Court of Justice. LU (Comments): Scrutiny reserve. PT (Comments): Emphasis of this provision changed from private enforcement (previous Article 33a) to Cooperation with National Courts, leaving private enforcement to the general legal principles applicable to EU Regulations. PT considers it is important to clarify whether it is clear from those general legal principles whether individuals will or not be able to enforce in national courts the DMA obligations, notably those in Articles 5 and 6. If it is not clear, then to the extent possible the issue should be clarified in the DMA. CZ (Drafting): **Article 32b** **Cooperation with national courts in damages actions** CZ (Comments):

	CZ perceives the changes from the Article 33a on private enforcement are heading in the right direction; nevertheless, we are still not satisfied with the wording of this Article, It is important to ensure that the goal of the Regulation, i. e. to harmonize the legislation in the Member States, is met (bacause of legal base of the regulation). The role of national courts should be clearly defined in a way that the Commission remains as the sole enforcer of the DMA. Consequently, the relationship between the proposed Article 32b and national systems needs to be clear. ES (Comments): Scrutiny reserve. The role of national courts in the enforcement of the DMA should be clarified. SE (Comments): SE has no current comments but would like to keep its scrutiny reservation on the article until it is further discussed. LT (Drafting):

	New paragraph: **National courts shall have the power to assess compliance of practices of gatekeepers with the obligations of Articles 5 and 6 of this Regulation, and apply respective findings in cases brought before them.** LT (Comments): The relationship between the proposed Article 32b and national systems needs to be clear. We are waiting for an updated Art 32b to make our *final* position. We suggest to clearly establish the power of national courts to apply DMA. Otherwise, in the absence of the respective power of the national courts, this Article is superfluous. E.g., see current Paragraph 2 of this Article, which provides that Member States shall forward to the Commission a copy of any written judgment of national courts deciding on the application of this Regulation. In the absence of the power of national courts to apply DMA, the requirement imposed on the MS to forward judgments of national courts on the application of DMA would seem to be inconsistent. Furthermore, we believe that the involvement of national courts would be useful in protecting the rights of parties where a gatekeeper harms their interests by non-complying with the requirements of DMA. The Commission may not be able to address all the possible cases of non-compliance due to its limited resources. In our opinion, such proposal does not cause any additional risks in terms of the decisions' inconsistency or internal market fragmentation. While

	the Commission remains the only body empowered to impose sanctions for non-compliance with obligations stipulated in DMA, national courts applying DMA must refer a question on its interpretation to the CJEU, in case it arises: - COM conducts investigations under DMA and applies sanctions for non-compliance, CJEU may review its decisions; - national courts apply DMA in particular cases but refer to the CJEU with the requests for preliminary ruling whenever questions regarding the application of EU law arise; - only the CJEU interprets provisions of EU law (including DMA) and provides its preliminary rulings to national courts. PL (Comments): We had concerns with the proposition of the article 33a (private enforcement). Especially we were concerned about the risk of the fragmentation of the interpretation and implementation of this article. In our opinion the scope of private enforcement provisions and the role of national courts were not clear. Therefore we are pleased that this article has been deleted from the DMA. However, the proposed article 32b, in our opinion, may also cause some legal uncertainty. Therefore, the article 32b should be further discussed. Especially the role of national courts in execution of DMA should be further explained. The possibility of applying DMA by national courts in compensation cases should be cleared. Moreover, we would like to know the relation of this article with articles

	15 and 16 of regulation COUNCIL REGULATION (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty. SK (Comments): We maintain **scrutiny reservation** concerning this article, because we still have some ambiguities regarding the private enforcement of business and consumer claims linked to GK obligations (from Articles 5 and 6) by national courts (notably the parallel coordination of the enforcement of EC and national courts). **We therefore support a clearer delineation that EC remains the sole enforcer within this Regulation, and a clearer distinction of the role of national courts thereof (it must be clear whether/and to what extend national courts will be able to enforce the obligations of the DMA (mainly art.5,6).** (Further, the draft regulation does not contain provisions on the limitation of the private enforcement of DMA by national courts, neither it elaborates on the relationship and conditionality of the procedures of national courts in opposite to the EC - entrusted with competences to enforce obligations in the DMA – which can lead to undesirable fragmentation within the single (internal) market. **We suggest that the draft regulation explicitly states/indicates the correlation in question.** **The primary objective of adopting the DMA** - to avoid potential fragmentation of digital market decisions at national level or relieve individual national institutions (especially those with less experience,

	limited resources and a weaker negotiating position) from assessing complex cases that often involve more than one country EU, **should be ensured.**
1. In proceedings for the application of this Regulation, national courts may ask the Commission to transmit to them information in its possession or its opinion on questions concerning the application of this Regulation.	CZ (Drafting): **1. In proceedings concerning damages actions before national courts where this Regulation is applied, national courts may ask the Commission to transmit to them information in its possession or its opinion on questions concerning the application of this Regulation.** CZ (Comments): **We would like to specify what "proceedings for the application of this Regulation" could in practive mean, to avoid possible parallel application of DMA; we think that only claiming damages could be the case. We think that maybe court could decide only after decidion of the Comision in damages claims only, otherwise, parallel aplication is a danger.**
2. Member States shall forward to the Commission a copy of any written judgment of national courts deciding on the application of this Regulation. Such copy shall be forwarded without delay after the full	

written judgment is notified to the parties.	
3. Where the coherent application of this Regulation so requires, the Commission, acting on its own initiative, may submit written observations to national courts. With the permission of the court in question, it may also make oral observations.	DK (Comments): Could you please inform about other areas where the CION can submit written observations to national courts? AT (Drafting): ~~**3. Where the coherent application of this Regulation so requires, the Commission, acting on its own initiative, may submit written observations to national courts. With the permission of the court in question, it may also make oral observations.**~~ AT (Comments): We see such possibility for the Commission to communicate its concerns to a national court as incompatible with the independence of courts.
4. For the purpose of the preparation of their observations only, the Commission may request the relevant national court to transmit or ensure the transmission to the Commission of any documents necessary for the assessment of the case.	AT (Drafting): ~~**4.** 3. For the purpose of the preparation of their observations only,

	the Commission may request the relevant national court to transmit or ensure the transmission to the Commission of any documents necessary for the assessment of the case. A national court may request the Commission to transmit or ensure the transmission to the relevant court of any document necessary in the proceeding. AT (Comments): We think that this obligation shall also apply vice versa. SK (Drafting): For the purpose of the preparation of their observations only, the Commission may request the relevant national court to transmit or ensure the transmission to the Commission of any documents necessary for the assessment of the case. **A national court may request the Commission to transmit or ensure the transmission to the relevant court of any document necessary in the proceeding.** SK (Comments): Tracing of the information/documents can be **additionally burdensome for national courts** (in support of AT proposal).
5. National courts shall not give a decision which runs counter to a decision adopted by the Commission under this Regulation. They must also avoid giving decisions which would conflict with a decision	DK

contemplated by the Commission in proceedings it has initiated under this Regulation. To that effect, the national court may assess whether it is necessary to stay its proceedings. This is without prejudice to the ability of national courts to request a preliminary ruling under Article 267 of the Treaty on the Functioning of the European Union.	(Comments): Could you elaborate on how national courts should get the information that the CION has or/ will adopt a decision? AT (Drafting): ~~**5. National courts shall not give a decision which runs counter to a decision adopted by the Commission under this Regulation. They must also avoid giving decisions which would conflict with a decision contemplated by the Commission in proceedings it has initiated under this Regulation. To that effect, the national court may assess whether it is necessary to stay its proceedings. This is without prejudice to the ability of national courts to request a preliminary ruling under Article 267 of the Treaty on the Functioning of the European Union.**~~ AT (Comments): Based on the Council Legal Services' explanations in the Working Party on September 15th, this provision is only intended to clarify that national courts must apply Union law. This is in any case a basic principle of the constitutional structure. This should therefore not be included explicitly in

	the text, as the wording raises more questions. CZ (Comments): **We still percieve this provision as problematic, because it presumes that a court could theoretically adopt decision before the Commision.**
Article 33 Request for a market investigation	FR (Drafting): Article 33 Request for a market investigation and a non-compliance procedure
1. When three or more Member States request the Commission to open an investigation pursuant to Article 15 because they consider that there are reasonable grounds to suspect that an undertaking should be designated as a gatekeeper, the Commission shall within four months examine whether there are reasonable grounds to open such an investigation and the result of such examination shall be published.	NL (Drafting): 1. When ~~three~~ **one** or more Member States request the Commission to open an investigation pursuant to Article 15 because they consider that there are reasonable grounds to suspect that an undertaking should be designated as a gatekeeper, the Commission shall within four months examine whether there are reasonable grounds to open such an investigation and the result of such examination shall be published.

	DE (Drafting): 1. When ~~three or more~~ one Member States request the Commission to open an investigation pursuant to Article 15 because ~~they~~ it considers that there are reasonable grounds to suspect that an undertaking should be designated as a gatekeeper, the Commission shall within four months examine whether there are reasonable grounds to open such an investigation and the result of such examination shall be published. DE (Comments): **Each Member State should be able to request the initiation of a market investigation on its own.** ES (Drafting): 1. When ~~three~~**one** or more Member States request the Commission to open an investigation pursuant to Article 15 because they consider that there are reasonable grounds to suspect that an undertaking should be designated as a gatekeeper, the Commission shall within four months examine whether there are reasonable grounds to open such an

	investigation and the result of such examination shall be published. ES (Comments): It would be necessary to clarify why only one threshold has been lowered and not the rest. It is important to note that the request of MS must be reasoned and in no case will it be binding on the Commission. Furthermore, taking into account the principle of loyal cooperation, there is no risk of abuse on the part of MS in the use of this mechanism. PL (Comments): We are open to the option of less than 3 Member States to request the Commission to open an investigation pursuant to art 15.
1a. When ~~three or more~~**a** Member ~~States request~~**State requests** the Commission to open an investigation pursuant to Article 16 because ~~they consider~~**it considers** that there are reasonable grounds to suspect 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 shall within four months examine whether there are reasonable grounds to open such an investigation and the result of such examination shall be published.	FI (Drafting): 1a. **When three or more Member States request** the Commission to open an investigation pursuant to Article 16 because ~~they consider~~**it considers** that there are reasonable grounds to suspect 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 shall within four

	months examine whether there are reasonable grounds to open such an investigation and the result of such examination shall be published. FI (Comments): FI considers that the original formulation of Commission proposal should be sustained. Hence, three or more Member States should request the Commission to open an investigation. DK (Drafting): 1a. When three or more ~~three or more~~ Member States ~~States request~~ **request** the Commission to open an investigation pursuant to Article 16 because they consider ~~they~~ that there are reasonable grounds to suspect 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 shall within four months examine whether there are reasonable grounds to open such an investigation and the result of such examination shall be published. DK (Comments):

	We do not support this amendment, as we do not see the rationale for enabling one single MS to request the Commission to open an investigation pursuant to Art.16. Therefore, we propose to delete the amendment. AT (Comments): We welcome this amendment. LU (Drafting): 1a. When **three or more** ~~three or more~~**a** ~~a~~ Member ~~States request~~**States** **requests** ~~s~~ the Commission to open an investigation pursuant to Article 16 because ~~they consider~~**it considers** that there are reasonable grounds to suspect 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 shall within four months examine whether there are reasonable grounds to open such an investigation and the result of such examination shall be published. LU (Comments):

	We strongly advocate to have "three or more Member States" as a threshold for requesting the Commission to open a market investigation into systematic non-compliance. If there is systematic non-compliance by a gatekeeper, then this is an EU-wide issue and three Member States to ask the Commission for a market investigation is within the logic of the DMA. Reducing this threshold to only one Member State, this provision could be used to unnecessarily burden the Commission services. It would also not be consistent with an EU-wide enforcement of the DMA and potentially even be used for political purposes. PT (Drafting): 1a. When three or more~~three or more~~ Member ~~States request~~**States request** the Commission to open an investigation pursuant to Article 16 because they consider~~they consider~~ that there are reasonable grounds to suspect 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 shall within four months examine whether there are reasonable grounds to open such an investigation and the result of such examination shall be published.

	PT (Comments): PT considers that requiring a threshold of three Member States would be a more balanced approach. ES (Comments): We welcome this amendment. FR (Drafting): 1a. When a Member States requests the Commission to open an investigation pursuant to Article 16 because it considers that there are reasonable grounds to suspect 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 shall within four months examine whether there are reasonable grounds to open such an investigation and the result of such examination shall be published. FR

	(Comments): The French authorities welcome this amendment. LT (Drafting): 1a. When three or more ~~three or more~~ Member States ~~States request~~ **request** the Commission to open an investigation pursuant to Article 16 because they consider ~~they~~ that there are reasonable grounds to suspect 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 shall within four months examine whether there are reasonable grounds to open such an investigation and the result of such examination shall be published. LT (Comments): As many other MSs, we cannot support the amendment. In our opinion, it is impossible for the gatekeeper to systematically infringe the DMA only in one MS. We plead the Pres to respect the legal basis of the DMA and the quantitative criteria, listed in Art 3. SK

	(Drafting): **When three or more Member States request** the Commission to open an investigation pursuant to Article 16 because **they consider ~~it considers~~** that there are reasonable grounds to suspect 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 shall within four months examine whether there are reasonable grounds to open such an investigation and the result of such examination shall be published. SK (Comments): **We prefer the initial proposal** due to efficiency and practicability (+EC overburden) of this procedure, as well as to stay in the (3 and more rule throughout the DMA).
1b. When three or more Member States request the Commission to open an investigation pursuant to Article 17 because they consider that **there are resonable grounds that** one or more services within the digital sector should be added to the list of core platform services pursuant to Article 2(2) or that there are reasonable grounds to suspect that one or several types of practices are not effectively addressed by this Regulation and may limit the contestability of core platform services or may be unfair, the Commission shall within four months examine whether there	NL (Drafting): 1b. When **~~three~~** **one** or more Member States request the Commission to open an investigation pursuant to Article 17 because…

are reasonable grounds to open such an investigation and the result of such examination should be published.	DE (Drafting): 1b. When ~~three or more~~ one Member States request the Commission to open an investigation pursuant to Article 17 because ~~they~~ it considers that **there are resonable grounds that** one or more services within the digital sector should be added to the list of core platform services pursuant to Article 2(2) or that there are reasonable grounds to suspect that one or several types of practices are not effectively addressed by this Regulation and may limit the contestability of core platform services or may be unfair, the Commission shall within four months examine whether there are reasonable grounds to open such an investigation and the result of such examination should be published. DE (Comments): See above. LU (Drafting): ~~**1b. When three or more Member States request the Commission to open an investigation pursuant to Article 17 because they consider**~~

	~~that there are reasonable grounds that one or more services within the digital sector should be added to the list of core platform services pursuant to Article 2(2) or that there are reasonable grounds to suspect that one or several types of practices are not effectively addressed by this Regulation and may limit the contestability of core platform services or may be unfair, the Commission shall within four months examine whether there are reasonable grounds to open such an investigation and the result of such examination should be published.~~ LU (Comments): This provision allows three or more Member States to start a procedure which may result in a change of scope of the DMA. As for any piece of legislation, the Commission's evaluation report, including evidence and demonstrable findings, a proper proposal for amending the DMA, via legislative procedure, is the appropriate basis for any such change. PT (Comments): PT agrees with the current draft of this provision as it enhances the role of

	Member States in a balanced manner. ES (Drafting): 1b. When ~~three~~ **one** or more Member States request the Commission to open an investigation pursuant to Article 17 because they consider that **there are resonable grounds that** one or more services within the digital sector should be added to the list of core platform services pursuant to Article 2(2) or that there are reasonable grounds to suspect that one or several types of practices are not effectively addressed by this Regulation and may limit the contestability of core platform services or may be unfair, the Commission shall within four months examine whether there are reasonable grounds to open such an investigation and the result of such examination should be published. ES (Comments): It would be necessary to clarify why only one threshold has been lowered and not the rest. It is important to note that the request of MS must be reasoned and in no case will it be binding on the Commission. Furthermore, taking into account the principle of loyal cooperation, there

	is no risk of abuse on the part of MS in the use of this mechanism. LT (Comments): We support this amendment.
	FR (Drafting): 1c. When three or more Member States request the Commission to open a proceeding pursuant to Article 18 because they consider that there are reasonable grounds to suspect that a provider of core platform services does not comply with Article 25, the Commission shall within four months examine whether there are reasonable grounds to open such a proceeding
2. Member States shall submit evidence in support of their request pursuant to Article 33(1), (1a) and (1b).	ES (Drafting): 2. Member States shall ~~submit evidence in support of~~ **reason** their request pursuant to Article 33(1), (1a) and (1b). ES (Comments):

	The burden for the request should be lower. It must be pointed out that the aim of the investigation itself is to gather the factual evidence that is going to be assessed. The correct use of this mechanism is ensured by the loyal cooperation of MS.
~~Article 33a~~ ~~Private enforcement~~	
~~National courts shall have the power to apply Articles 5 and 6 of this Regulation.~~	
~~2. In proceedings for the application of this Regulation, national courts may ask the Commission to transmit to them information in its possession or its opinion on questions concerning the application of this Regulation.~~	
~~3. Member States shall forward to the Commission a copy of any written judgment of national courts deciding on the application of this Regulation. Such copy shall be forwarded without delay after the full written judgment is notified to the parties.~~	
~~4. Where the coherent application of this Regulation so requires, the Commission, acting on its own initiative, may submit written observations to national courts. With the permission of the court in question, it may also make oral observations.~~	
~~5. For the purpose of the preparation of their observations only, the Commission may request the relevant national court to transmit or ensure the transmission to the Commission of any documents necessary for the assessment of the case.~~	

~~6. National courts shall not give a decision which run counter to a decision adopted by the Commission under this Regulation. They must also avoid giving decisions which would conflict with a decision contemplated by the Commission in proceedings it has initiated under this Regulation. To that effect, the national court may assess whether it is necessary to stay its proceedings.~~	
	FR (Drafting): Chapter X (new) Cooperation and coordination with national competition authorities Article X1 Role of national competition authorities 1. The Commission and national competition authorities shall work in close coordination and cooperation in their enforcement actions. 2. The Commission is primarily responsible for the enforcement of the present Regulation. National competition authorities as referred to in Article 2 of Directive (EU) 2019/1 may complement these enforcement actions. For this purpose, a national competition authority: - may make use of the investigative and monitoring powers referred to in Articles 19, 20, 21 and 24 of Chapter V of the present regulation on their own initiative, in accordance with provisions of Article X.2.2. -Upon referral by the Commission, shall be entitled to apply Articles 16a, 22, 23, 24a, 25, 26 and 27. 3. Where a national competition authority considers that it is well

	placed to apply Articles 16a, 22, 23, 24a, 25, 26 or 27, it shall submit a request to the Commission and inform the other national competition authorities accordingly. 4. Where the Commission considers that a national competition authority would be well placed to apply Articles 16a, 22, 23, 24a, 25, 26 or 27, it may ask the relevant national competition authority to initiate proceedings. National competition authorities retain full discretion in deciding whether or not to initiate proceedings. 5. Following a reasoned request pursuant to paragraph 3 or 4, the Commission shall refer the case to the national competition authority by decision if the requirements of paragraph 6 are met. The decision shall be notified without delay to the undertakings concerned. The Commission shall also inform the other national competition authorities. The decision whether or not to refer the case shall be taken within [42 working days] starting from the receipt of the request by the Commission. If the Commission does not take a decision within this period, it shall be deemed to have adopted a decision to refer the case in accordance with the submission made by the national competition authority. 6. Before referring a case, the Commission shall assess whether a national competition authority is well placed to apply Articles 16a, 22, 23, 24a, 25, 26 or 27. This assessment shall take into account, inter alia, the need for swift and efficient enforcement of this Regulation, the optimal allocation of the workload at European and national levels with respect to resource constraints and priorities, the characteristics of the case concerned such as parties and local nexus as well as prior experiences and investigative efforts of the national competition authority with a view to the case. 7. Where a case has been referred to a national competition authority pursuant to this Article, the national competition authority shall have the

	power: - to adopt decisions pursuant to Article 16a; - to order interim measures pursuant to Article 22; - to accept commitments pursuant to Article 23; - to examine third parties claims reporting pursuant to Article 24a; - to adopt non-compliance decisions pursuant Article 25; - to impose fines and periodic penalty payments pursuant to Articles 26 and 27. 8. The initiation by the Commission of proceedings or market investigations for the adoption of a decision under Chapter V of the present regulation shall relieve the national competition authorities of their competence under this Regulation with regard to the relevant facts. If a national competition authority is already acting on this basis, the Commission shall only initiate proceedings after consulting with this authority. 9. Subject to the relevant conditions set forth in articles 16a, 22, 23, 25, 26 or 27, following the procedure stipulated in an implementing act, the Commission may decide to extend the territorial scope of a decision adopted by a national competition authority pursuant to paragraph 7 to the whole European Union Internal Market. The decision shall be taken in accordance with the advisory procedure referred to in Article 32(4). Article X2 Cooperation network 1. In order to ensure an effective and consistent application of the DMA and competition law, the Commission and the national competition authorities shall cooperate with each other through the European Competition Network (ECN).

	2. The national competition authorities shall, when applying the relevant monitoring and investigative powers referred to in Articles 19, 20, 21 and 24 of chapter V of this Regulation, inform the Commission in writing before or without delay after commencing the first formal investigative measure. This information shall also be made available to the other competition authorities. National competition authorities shall take into account other national competition authorities investigative proceedings on a same gatekeeper's practise at the same time to ensure an efficient enforcement of the present regulation. 3. No later than 30 days before the adoption of a decision, accepting commitments or ordering measures pursuant to the powers referred to in article X1.7, the national competition authorities shall inform the Commission. To that effect, they shall provide the Commission with a summary of the case, the envisaged decision or, in the absence thereof, any other document indicating the proposed course of action. This information shall also be made available to the competition authorities of the other Member States. At the request of the Commission, the acting competition authority shall make available to the Commission other documents it holds which are necessary for the assessment of the case. The information supplied to the Commission shall be made available to the competition authorities of the other Member States. Article X3 *Digital Markets Advisory Group* 1. The competent authorities of the Member States shall form together a Digital Markets Advisory Group that provides the Commission with expertise for the purpose of enforcing this Regulation. 2. The national competent authorities referred to in paragraph 1 of this Article are:

	a. the competition authorities referred to in Article 2 of Directive (EU) 2019/1; b. the authorities referred to in Article 5 of Directive (EU) 2018/1972; c. the supervisory authorities referred to in Article 51 of Regulation (EU) 2016/679. Member States may additionally designate other competent authorities within the meaning of paragraph 1 of this Article, in particular on the basis of their task of enforcing national competition rules prohibiting unfair unilateral practices other than those prohibited by Article 102 TFEU or on the basis of their expertise in the field of economic regulation in the digital field. 3. The Digital Markets Advisory Group shall have the following tasks: - Promote the exchange of information and best practices between national competent authorities and the Commission; - Make recommendations to the Commission on the need to conduct market investigations under Article 14; - Make recommendations to the Commission on the need to open proceedings under Article 18; - Provide the Commission with relevant information on the behaviour of gatekeepers, technical advice, opinions, analysis and expertise in the conduct of market investigations under Article 14, including Article 16a; - Provide the Commission with relevant information on the behaviour of gatekeepers, technical advice, opinions, analysis and expertise prior the adoption of a specification decision under Article 7; - Examine report from third parties under Article 24a and make recommendations to the Commission on the need to initiate proceedings under Article 18 or market investigations under

	Article 14; - Provide the Commission with advice and expertise in the preparation of implementing acts under Article 36, delegated act under Article 37 and legislative proposals and policy initiatives, including under Article 38; Provide the Council of the European Union and the European Parliament, at their request or on its own initiative, with technical advice, opinions or analyses within its competences. FR (Comments): As the DMA serves the purpose of contributing to the proper functioning of the internal market by laying down harmonised rules ensuring contestable and fair markets in the digital sector, the French authorities consider it is indeed necessary to centralize certain powers at EU level, such as gatekeepers' designation or regulatory dialogue with gatekeepers. Said centralization, as currently provided for in the compromise text, will improve effectiveness and prevent fragmentation. However, enforcing the DMA will need substantial dedicated staff with expertise to match the resources of the gatekeepers. National competition authorities should therefore be able to properly support the Commission and contribute with their capacities in the DMA enforcement, within a referral system similar to the one currently already in use in merger control. Since the DMA complements European and national competition law, which continues to apply alongside the DMA, this better involvement of national competition authorities within the DMA enforcement would also help to keep and create synergies in enforcement. For a coherent application of both legal regimes, close coordination and cooperation between the European Commission and in particular national competition authorities is indeed essential.

	The French authorities therefore advocate for an approach (see Articles X1 and X2) where the Commission would remain primarily responsible for the enforcement of DMA, and national competition authorities may complement these enforcement actions. Said possibility of share enforcement when appropriate, coupled with strong cooperation and coordination of the Commission and the NCAs actions via the European Competition Network, will ensure that the DMA can be swiftly and effectively enforced. Such scheme would also guarantee that the workload is optimally allocated at European and national levels, and that Commission and national competition authorities have adequate leeway to set own enforcement priorities. Finally, this approach guarantees that the DMA is coherently enforced across the entire Single Market as the initiation of proceedings by the Commission shall relieve the national competition authorities of their competence under this Regulation.
Chapter VI	
General provisions	
Article 34 Publication of decisions	PT (Comments):

	PT agrees in general with the current draft of Article 34. ES (Drafting): Article 34 ~~Publication of decisions~~ **Transparency tool**
1. The Commission shall publish the decisions which it takes pursuant to Articles 3, 7, 8, 9, 15, 16, 17, 18, 22, 23(1), 25, 26 and 27. Such publication shall state the names of the parties and the main content of the decision, including any penalties imposed.	NL (Comments): If a new chapter as suggested by FR DE NL is accepted, this article should refer to that chapter. ES (Drafting): 1. The Commission shall publish the decisions which it takes pursuant to Articles 3, 7, 8, 9, 15, 16, 17, 18, 22, 23(1), 25, 26 and 27. Such publication shall state the names of the parties and the main content of the decision, including any penalties imposed. FR

	(Drafting): (1) The Commission shall publish the decisions which it takes pursuant to Articles 3, 7, 8, 9, 15, 16, 17, 18, 22, 23 (1), 25, 26, 27 **and X.1.5**. Such publication shall state the names of the parties and the main content of the decision, including any penalties imposed.
	ES (Drafting): **2. The Commission shall publish on a dedicated public website the documents, reports or summaries pursuant to Articles 4(1), 7(4), 9a(2), 12(4), 13, 17 and 33.** **3. The Commission shall establish a reporting mechanism through which interested third parties could provide relevant information and report to the Commission every practice that falls into the scope of this Regulation and could be deemed to be a non-compliance of it.** ES (Comments): The Digital Markets Act proposal contains various transparency obligations along the text. It is likely that this wide range of transparency obligations and active publication of information by the Commission will trigger a vast amount of documents and publications related to the different procedures that can be developed within the framework of the DMA. In order to facilitate the access of citizens, businesses or other interested entities to these documents and with the aim at the improvement of relations with the European institutions, it would be

	necessary to avoid the dispersion of information and the complexity of accessing it. Besides, the establishment of a reporting mechanism will allow third parties to inform the Commission of all those practices carried out by Gatekeepers that may imply a breach of the obligations provided for in this Regulation. In this context, the creation of a single and centralized information channel within the framework of the DMA, far from imposing new administrative burdens on the stakeholders, will mean a reduction in information search times, will enhance the quantity and quality of information published by the European Commission, will foster interoperability and reuse of it and will avoid duplication and dispersion of publications.
2. The publication shall have regard to the legitimate interest of gatekeepers or third parties in the protection of their confidential information.	ES (Drafting): ~~2~~**4**. The publication shall have regard to the legitimate interest of gatekeepers or third parties in the protection of their confidential information.
Article 35 Review by the Court of Justice of the European Union	PT (Comments): PT agrees in general with the current draft of Article 35.

In accordance with Article 261 of the Treaty on the Functioning of the European Union, the Court of Justice of the European Union has unlimited jurisdiction to review decisions by which the Commission has imposed fines or periodic penalty payments. It may cancel, reduce or increase the fine or periodic penalty payment imposed.	
Article 36 Implementing provisions	NL (Comments): If a new chapter as suggested by FR DE NL is accepted, this article should refer to that chapter. PT (Comments): PT agrees in general with the current draft of Article 36.
1. The Commission may adopt implementing acts concerning:	
(a) the form, content and other details of notifications and submissions pursuant to Article 3;	
(b) the form, content and other details of the technical measures that gatekeepers shall implement in order to ensure compliance with ~~points (h), (i) and (j) of~~ Article 6(1);	DK (Comments): We support this amendment.

	LT (Comments): We support this amendment.
(ba) the form, content and other details of the reasoned request pursuant to Article 7(7);	
(bb) the form, content and other details of the reasoned requests pursuant to Articles 8 and 9;	
(bc) the form, content and other details of the regulatory reports delivered pursuant to Article 9a;	
(c) the form, content and other details of notifications and submissions made pursuant to Articles 12 and 13;	
(d) the practical arrangements of extension of deadlines as provided in Article 16;	
(e) the practical arrangements of the proceedings concerning investigations pursuant to Articles 15, 16, 17, and proceedings pursuant to Articles 22, 23 and 25;	
	FR (Drafting): (ee) the terms and conditions for the reporting mechanism for business users and end-users pursuant to article 24a

(f) the practical arrangements for exercising rights to be heard provided for in Article 30;	
(g) the practical arrangements for the negotiated disclosure of information provided for in Article 30;	
(aa) the practical arrangements for the cooperation and coordination between the Commission and Member States provided for in Article 32a.	SE (Comments): Since SE has a scrutiny reservation regarding article 32a, it also includes this point. Preliminary, the position of SE is that a proposal for an extended cooperation and coordination should be further specified in the regulation. FR (Drafting): (h) the practical arrangements for the cooperation and coordination between the Commission and Member States provided for in Article 1(7), **including the practical arrangements of the cooperation network provided for in Article [X2] and the Digital Markets Advisory Group [X3];**
	FR (Drafting):

	(ha) the procedure to extend the territorial scope of the content of a decision adopted by a national competition authority.
2. ~~Those implementing acts~~**Implementing acts laid down in points (a) to (g) of paragraph 1** shall be adopted in accordance with the advisory procedure referred to in Article 37a(2). **Implementing act laid down in point (aa) of paragraph 1 shall be adopted in accordance with the examination procedure referred to in Article 37a(2a).** 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.	DK (Comments): We support these amendments. DE (Comments): We welcome the proposed distinction. LT (Comments): We support these amendments.
Article 37 Exercise of the delegation	PT (Comments): PT agrees in general with the current draft of Article 37.
1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article **and in accordance with Article 290 of the Treaty on the Functioning of the European**	DK

Union.	(Comments): We support this amendment. LT (Comments): We support this amendment.
2. The power to adopt delegated acts referred to in Articles 3(5**), 3(5a**) and 10(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.	DK (Comments): We support this amendment. LT (Comments): We support this amendment.
3. The delegation of power referred to in Articles 3(5**), 3(5a**) and 10(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.	DK (Comments): We support this amendment. LT

	(Comments): We support this amendment.
4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Inter-institutional Agreement of 13 April 2016 on Better Law-Making.	
5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.	
6. A delegated act adopted pursuant to Articles 3(5**), 3(5a**) and 10(1) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and to the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.	DK (Comments): We support this amendment. LT (Comments): We support this amendment.
Article 37a Committee procedure	PL (Comments): We believe that NCAs should represent the Member States within the Committee. If the Committee is to function in an effective and coherent

	manner, we should provide for its members to be able to use the exact same, unified conceptual framework and tools. :
1. The Commission shall be assisted by a committee ('the Digital Markets Advisory Committee'). That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.	
	PT (Drafting): 1a. The committee shall be composed of representatives of the competition authorities of the Member States. An additional Member State representative competent in matters other than competition may be appointed PT (Comments): PT considers the participation of national competition authorities in the committee will ensure that the procedure benefits from the experience gathered in competition proceedings, which is appropriate given the extent to which the enforcement experience under EU and national competition rules has informed the obligations imposed on gatekeepers in the DMA. This is without prejudice to the participation of other national authorities, when necessary, either attending the meetings or assisting the representatives in the preparation of the meetings. See also PT suggestion concerning Recital 77.

2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.	
Where the opinion of the committee is to be obtained by written procedure, that procedure shall be terminated without result when, within the time-limit for delivery of the opinion, the chair of the committee so decides or a simple majority of committee members so request.	
2a. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply	DK (Comments): We support this amendment. LT (Comments): We support this amendment.
3. The Commission shall communicate the opinion of the committee to the addressee of an individual decision, together with that decision. It shall make the opinion public together with the individual decision, having regard to the legitimate interest in the protection of professional secrecy.	BE (Comments): **BE:** Regarding article 37a, 3 we prefer the adding in the recitals of the following guarantee of confidentiality: *the Commission should of course be entitled to report on the opinion of the Advisory Committee, but without disclosing case related information received from ECN members*.

	SK (Comments): We still dare to appeal on the **possible tendency** of the GK to **undermine the authority of the decision** (made by EC, Committee) – for instance, if the "opinion" of the Committee will be in conflict with the "decision" of the EC. We do not consider the publication of these information as appropriate nor useful.
Article 37b **Guidelines**	DE (Comments): We welcome the idea to implement guidelines for legal certainty and coherence. PT (Comments): PT agrees in general with, and supports, the current draft of Article 37b and the corresponding Recital 76b. PL (Comments):

	We welcome the proposition of adopting the guidelines regarding aspects of DMA. Such document may significantly improve the implementation and execution of this Regulation.
The Commission may adopt guidelines on any of the aspects of this Regulation in order to facilitate its effective implementation and enforcement.	FI (Comments): Finland supports the proposed amendments to Art. 37b. NL (Comments): **We welcome this addition.** DK (Comments): We support the introduction of this article and the possibility for the Commission to adopt guidelines. This will provide more legal clarity and legal certainty. SE (Comments): SE has previously put forward the importance of allowing companies, in

	particular SMEs, to exercise and understand their rights under the regulation and that guidelines and information measures could be issued by the Commission in addition to the legislation when the regulation entry into force. According to SE, the new provision can make room for this and SE therefore welcomes that the provision has been introduced. However, SE considers that the perspective of business users, in particular SMEs, and the importance of understanding their rights under the Regulation should be highlighted in the new recital 76b. They being able to do so is an important part of the effective application of DMA. LT (Comments): We fully support the new Art. SK (Comments): We welcome this paragraph.
Article 38 Review	PT agrees in general with the current draft of Article 38.
1. By DD/MM/YYYY, and subsequently every three years, the Commission shall evaluate this Regulation and report to the European	

Parliament, the Council and the European Economic and Social Committee.	
2. The evaluations shall establish whether it is required to modify, add or remove rules, including regarding the list of core platform services laid down in point 2 of Article 2, the obligations laid down in Articles 5 and 6 and their enforcement, ~~o~~**to** ensure that digital markets across the Union are contestable and fair. Following the evaluations, the Commission shall take appropriate measures, which may include legislative proposals.	
3. **The competent authorities of** Member States shall provide any relevant information they have that the Commission may require for the purposes of drawing up the report referred to in paragraph 1.	DK (Comments): We support this amendment. LT (Comments): We support this amendment.
Article 39 Entry into force and application	PT (Comments): PT agrees in general with the current draft of Article 39.
1. This Regulation shall enter into force on the twentieth day	

following that of its publication in the *Official Journal of the European Union*.	
2. This Regulation shall apply from six months after its entry into force.	SK (Drafting): This Regulation shall apply from ~~six~~ **twelve months** after its entry into force. SK (Comments): We would welcome the possibility to extend the application of the regulation from 6 months to **min. 12 months** (as a minimum time span to organize the national authorities / institutions that will cooperate with the EC, determine nominations to the Committee, etc.)
~~However~~ **By way of derogation** Articles 3**(5)**, ~~15, 18, 19, 20, 21, 26, 27, 30, 31~~**3(5a), 36** and ~~34~~**37a** shall apply from [date of entry into force of this Regulation].	NL (Comments): ~~Why are the articles on investigation and penalty powers deleted here?~~ DK (Drafting): ~~However~~ **However,** Articles 3, 15, 18, 19, 20, 21, 26, 27, 30, 31 and 34shall apply from [date of entry into force of this Regulation].

	DK (Comments): We note that, as a consequence of this amendment, Articles 5 and 15 are not longer immediately applicable, meaning that the designation process will not take place with the entry into force of the Regulation. Rather, with the exception of art.3 (5) relating to the adoption of delegated acts, Art.3 and 15 will apply from six months after the entry into force of the regulation. Overall, it will thus take at least 12 months before designated gatekeeper will be required to comply with the obligations in Articles 5 and 6. We believe that this represents an undue extension, which can compromise the achievement of the goals that the DMA pursues. Therefore, we propose to restore the text of Art.39.2 as originally formulated in the Commission's proposal. AT (Comments): We propose to examine, if Art. 3 and that the obligation for gatekeepers to notify in Art. 3 (3) can also apply from the date of entry into force of the Regulation - as the relevant thresholds are not in the impelementing act, but in the Annex. DE (Comments):

	The amendment will lead to a delay of the designation of gatekeepers as the applicability of Art. 3 pursuant to this para. 2 shall be limited to para 5, 5a and 6 which is questionable. We stress that it is important to designate the relevant gatekeepers as soon as possible. Therefore, we suggest to keep the original proposal. PT (Drafting): ~~However~~ **By way of derogation** Articles 3**(5)**, ~~15, 18, 19, 20, 21, 26, 27, 30, 31~~**3(5a), 36** and ~~34~~**37** shall apply from [date of entry into force of this Regulation]. PT (Comments): PT understands that immediate application after entry into force is envisaged only for provisions related to issuing implementing and delegated acts to increase legal certainty, so reference to Article 37a is a typo and is meant to refer to Article 37, which relates to the exercise of delegation. PT considers the six-month period applicable to other provisions appears reasonable, balanced and sufficient to ensure that gatekeepers are able to prepare for the implementation of the obligations under the DMA.

	LT (Comments): We support this amendment.
3. This Regulation shall be binding in its entirety and directly applicable in all Member States.	
Done at Brussels,	
For the European Parliament For the Council	
The President The President	
	NL (Drafting): **Chapter X (new)** **Cooperation and coordination with national competition authorities** Article X1 Role of national competition authorities 1. The Commission and national competition authorities shall work in close coordination and cooperation in their enforcement actions.

	2. The Commission is primarily responsible for the enforcement of the present Regulation. National competition authorities as referred to in Article 2 of Directive (EU) 2019/1 may complement these enforcement actions. For this purpose, a national competition authority: a. May make use of the investigative and monitoring[12] powers referred to in Articles 19, 20, 21 and 24 of Chapter V of the present regulation on their own initiative, in accordance with provisions of Article X.2.2. b. Upon referral by the Commission, shall be entitled to apply Articles 16a, 22, 23, 24a, 25, 26 and 27. 3. Where a national competition authority considers that it is well placed to apply Articles 16a, 22, 23, 24a, 25, 26 or 27, it shall submit a request to the Commission and inform the other national competition authorities accordingly. 4. Where the Commission considers that a national competition authority would be well placed to apply Articles 16a, 22, 23, 24a, 25, 26 or 27, it may ask the relevant national competition authority to initiate proceedings. National competition authorities retain full

[12] Monitoring measures of national competition authorities may include all necessary actions to scrutinise whether a gatekeeper does comply with the obligations laid down in Article 5, the obligations laid down in Article 6 as specified by the Commission and the decisions taken by the Commission pursuant to Articles 7 and 16 as well as the decisions taken by the Commission or an NCA according to Articles 22 and 23.

	discretion in deciding whether or not to initiate proceedings. 5. Following a reasoned request pursuant to paragraph 3 or 4, the Commission shall refer the case to the national competition authority by decision if the requirements of paragraph 6 are met. The decision shall be notified without delay to the undertakings concerned. The Commission shall also inform the other national competition authorities. The decision whether or not to refer the case shall be taken within [42 working days] starting from the receipt of the request by the Commission. If the Commission does not take a decision within this period, it shall be deemed to have adopted a decision to refer the case in accordance with the submission made by the national competition authority. 6. Before referring a case, the Commission shall assess whether a national competition authority is well placed to apply Articles 16a, 22, 23, 24a, 25, 26 or 27. This assessment shall take into account, inter alia, the need for swift and efficient enforcement of this Regulation, the optimal allocation of the workload at European and national levels with respect to resource constraints and priorities, the characteristics of the case concerned such as parties and local nexus as well as prior experiences and investigative efforts of the national competition authority with a view to the case.

	7. Where a case has been referred to a national competition authority pursuant to this Article, the national competition authority shall have the power: – to adopt decisions pursuant to Article 16a; – to order interim measures pursuant to Article 22; – to accept commitments pursuant to Article 23; – to examine third parties claims reporting pursuant to Article 24a; – to adopt non-compliance decisions pursuant Article 25; – to impose fines and periodic penalty payments pursuant to Articles 26 and 27. 8. The initiation by the Commission of proceedings or market investigations for the adoption of a decision under Chapter V of the present regulation shall relieve the national competition authorities of their competence under this Regulation with regard to the relevant facts. If a national competition authority is already acting on this basis, the Commission shall only initiate proceedings after consulting with this authority. 9. Subject to the relevant conditions set forth in articles 16a, 22, 23, 25, 26 or 27, following the procedure stipulated in an implementing act, the Commission may decide to extend the territorial scope of a decision adopted by a national competition

	authority pursuant to paragraph 7 to the whole European Union Internal Market. The decision shall be taken in accordance with the advisory procedure referred to in Article 32(4). *Article X2* *Cooperation network* 1. In order to ensure an effective and consistent application of the DMA and competition law the Commission and the national competition authorities shall cooperate with each other through the European Competition Network (ECN). 2. The national competition authorities shall, when applying the relevant monitoring and investigative powers referred to in Articles 19, 20, 21 and 24 of chapter V of this Regulation, inform the Commission in writing before or without delay after commencing the first formal investigative measure. This information shall also be made available to the other competition authorities. National competition authorities shall take into account other national competition authorities investigative proceedings on a same gatekeeper's practise at the same time to ensure an efficient enforcement of the present regulation.

	3. No later than 30 days before the adoption of a decision, accepting commitments or ordering measures pursuant to the powers referred to in article X1.7, the national competition authorities shall inform the Commission. To that effect, they shall provide the Commission with a summary of the case, the envisaged decision or, in the absence thereof, any other document indicating the proposed course of action. This information shall also be made available to the competition authorities of the other Member States. At the request of the Commission, the acting competition authority shall make available to the Commission other documents it holds which are necessary for the assessment of the case. The information supplied to the Commission shall be made available to the competition authorities of the other Member States. *Article X3* *Digital Markets Advisory Group* 1. The competent authorities of the Member States shall form together a Digital Markets Advisory Group that provides the Commission with expertise for the purpose of enforcing this

	Regulation. 2. The national competent authorities referred to in paragraph 1 of this Article are: a. the competition authorities referred to in Article 2 of Directive (EU) 2019/1; b. the authorities referred to in Article 5 of Directive (EU) 2018/1972; c. the supervisory authorities referred to in Article 51 of Regulation (EU) 2016/679. Member States may additionally designate other competent authorities within the meaning of paragraph 1 of this Article, in particular on the basis of their task of enforcing national competition rules prohibiting unfair unilateral practices other than those prohibited by Article 102 TFEU or on the basis of their expertise in the field of economic regulation in the digital field. 3. The Digital Markets Advisory Group shall have the following tasks: – Promote the exchange of information and best practices between national competent authorities and the Commission; – Make recommendations to the Commission on the need to conduct market investigations under Article 14;

	– Make recommendations to the Commission on the need to open proceedings under Article 18; – Provide the Commission with relevant information on the behaviour of gatekeepers, technical advice, opinions, analysis and expertise in the conduct of market investigations under Article 14, including Article 16a; – Provide the Commission with relevant information on the behaviour of gatekeepers, technical advice, opinions, analysis and expertise prior the adoption of a specification decision under Article 7; – Examine report from third parties under Article 24a and make recommendations to the Commission on the need to initiate proceedings under Article 18 or market investigations under Article 14; – Provide the Commission with advice and expertise in the preparation of implementing acts under Article 36, delegated act under Article 37 and legislative proposals and policy initiatives, including under Article 38; – Provide the Council of the European Union and the European Parliament, at their request or on its own initiative, with technical advice, opinions or analyses within its competences.

	General comments
	BE (Comments): *We maintain our scrutiny reservation and reserve our right for further comments during the course of the negotiations.* **BE** supports the reference to 'interested third parties' in article 7,4 and 7,6. However, it is of the utmost importance that the regulatory dialogue is not limited to one between the COM and the gatekeepers. We believe the COM should apply a consultation process before applying any remedies. This is crucial in order to be effective. Letting all interested parties share their views on draft remedies can improve the effectiveness of the remedy. Especially when adopting a decision pursuant to articles 3, 7, 8, 9, 15, 16, (16a) and 17 of the DMA. We therefore propose an amendment to insert an article 30a in the DMA: ***"Art. 30a Consultation and transparency mechanism*** When adopting a decision pursuant to Articles 3, 7, 8, 9, 15, 16, 16a, and 17, the Commission shall give interested parties the opportunity to comment on the draft measures within a reasonable period." A formal consultation procedure could foster transparency, efficiency, and participation when letting all kinds of stakeholders express their views and inform the COM about potential problems and so improve final decisions. It is crucial to provide transparency and allow the structured participation of all relevant parties providing their views, not only the regulated entities. This increases the acceptance of regulation, helps to ensure that the

	implementation of the obligations serves to achieve the objectives that it aimed for, and thus also contributes to a more effective implementation. LT (Comments): We kindly ask the Pres to provide us with compromised text, which shows **all the changes**, made to the Cion text (no changes have been agreed upon; therefore we would like to see the evolution of the text). SK (Comments): **We do not support** the DE-FR-NL paper on the tailor-made remedies (art. 16a) nor **on the proposed model of the enforcement of the DMA**.
END	**END**