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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 recitals of the second compromise text (doc. ST 11698/21)

Delegations will find attached a table for MS comments on recitals 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 RECITALS 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 - DK - AT - DE - LU - PT - SE - FR - LT **Drafting suggestions and comments**
THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,	
Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,	
Having regard to the proposal from the European Commission,	
After transmission of the draft legislative act to the national parliaments,	
Having regard to the opinion of the European Economic and Social Committee[1],	
Having regard to the opinion of the Committee of the Regions[2],	
Having regard to the opinion of the European Data Protection Supervisor[3],	
Acting in accordance with the ordinary legislative procedure,	
Whereas:	
(1) Digital services in general and online platforms in particular play an increasingly important role in the economy, in particular in the internal market, by providing new business opportunities in the Union and	

1 OJ C , , p. .
2 OJ C , , p. .
3 OJ C , , p. .

facilitating cross-border trading.	
(2) Core platform services, at the same time, feature a number of characteristics that can be exploited by ~~their providers.~~the undertakings providing them. These characteristics of core platform services include among others extreme scale economies, which often result from nearly zero marginal costs to add business users or end users. Other characteristics of core platform services are very strong network effects, an ability to connect many business users with many end users through the multi-sidedness of these services, a significant degree of dependence of both business users and end users, lock-in effects, a lack of multi-homing for the same purpose by end users, vertical integration, and data driven-advantages. All these characteristics combined with unfair conduct by ~~providers of~~undertakings providing these services can have the effect of substantially undermining the contestability of the core platform services, as well as impacting the fairness of the commercial relationship between ~~providers of~~undertakings providing such services and their business users and end users, leading to rapid and potentially far-reaching decreases in business users' and end users' choice in practice, and therefore can confer to the ~~provider of~~undertakings providing those services the position of a so-called gatekeeper.	DK (Comments): We support the amendment. LT (Comments): We support the amendment.
(3) A small number of large ~~providers of~~undertakings providing core platform services have emerged with considerable economic power. Typically, they feature an ability to connect many business users with many end users through their services which, in turn, allows them to leverage their advantages, such as their access to large amounts of data, from one area of their activity to new ones. Some of these ~~providers~~undertakings exercise control over whole platform ecosystems in the digital economy and are structurally extremely difficult to challenge or contest by existing or new market operators, irrespective of how innovative and efficient these may be. Contestability is particularly reduced due to the existence of very high barriers to entry or exit,	DK (Comments): We support the amendment. LT (Comments):

including high investment costs, which cannot, or not easily, be recuperated in case of exit, and absence of (or reduced access to) some key inputs in the digital economy, such as data. As a result, the likelihood increases that the underlying markets do not function well – or will soon fail to function well.	We support the amendment.
(4) The combination of those features of gatekeepers is likely to lead in many cases to serious imbalances in bargaining power and, consequently, to unfair practices and conditions for business users as well as end users of core platform services provided by gatekeepers, to the detriment of prices, quality, choice and innovation therein.	
(5) It follows that the market processes are often incapable of ensuring fair economic outcomes with regard to core platform services. Whereas Articles 101 and 102 TFEU remain applicable to the conduct of gatekeepers, their scope is limited to certain instances of market power (e.g. dominance on specific markets) and of anti-competitive behaviour, while enforcement occurs ex post and requires an extensive investigation of often very complex facts on a case by case basis. Moreover, existing Union law does not address, or does not address effectively, the identified challenges to the well-functioning of the internal market posed by the conduct of gatekeepers, which are not necessarily dominant in competition-law terms.	
(6) Gatekeepers have a significant impact on the internal market, providing gateways for a large number of business users, to reach end users, everywhere in the Union and on different markets. The adverse impact of unfair practices on the internal market and particularly weak contestability of core platform services, including their negative societal and economic implications, have led national legislators and sectoral regulators to act. A number of national regulatory solutions have already been adopted or proposed to address unfair practices and the contestability of digital services or at least with regard to some of them. This has created	BE (Drafting): (6) Gatekeepers have a significant impact on the internal market, providing gateways for a large number of business users, to reach end users, everywhere in the Union and on different markets. The adverse impact of unfair practices on the internal market and particularly weak contestability of core platform services, including their negative societal

a risk of divergent regulatory solutions and thereby fragmentation of the internal market, thus raising the risk of increased compliance costs due to different sets of national regulatory requirements.	and economic implications, have led national legislators and sectoral regulators to act. A number of national regulatory solutions have already been adopted or proposed to address unfair practices and the contestability of digital services or at least with regard to some of them. This has created divergent regulatory solutions and thereby fragmentation of the internal market, thus raising the risk of increased compliance costs due to different sets of national regulatory requirements. BE (Comments): Cfr. LU-BE proposal. The changes in the text should also be reflected in the recitals. DE (Drafting): (6) Gatekeepers have a significant impact on the internal market, providing gateways for a large number of business users, to reach end users, everywhere in the Union and on different markets. The adverse impact of unfair practices on the internal market and particularly weak contestability of core platform services, including their negative societal and economic implications, have led national legislators and sectoral regulators to act due to lack of harmonized rules in the Union. A number of national regulatory solutions have already been adopted or proposed to address unfair practices and the contestability of digital services or at least with regard to some of them. However, the majority of national legislators

	did not act. This combination has created a risk of costs due to inaction and additional costs due to ~~of~~ divergent regulatory solutions and thereby fragmentation of the internal market, thus raising the risk of increased compliance costs due to different sets of national regulatory requirements.
(7) Therefore, business users and end-users of core platform services provided by gatekeepers should be afforded appropriate regulatory safeguards throughout the Union against the unfair behaviour of gatekeepers in order to facilitate cross-border business within the Union and thereby improve the proper functioning of the internal market and to address existing or likely emerging fragmentation in the specific areas covered by this Regulation. Moreover, while gatekeepers tend to adopt global or at least pan-European business models and algorithmic structures, they can adopt, and in some cases have adopted, different business conditions and practices in different Member States, which is liable to create disparities between the competitive conditions for the users of core platform services provided by gatekeepers, to the detriment of integration within the internal market.	FI (Drafting): (7) Therefore, the objective of this Regulation is to contribute to the proper functioning of the internal market by laying down rules to ensure contestability and fairness for the digital sector in general and for business users and end-users of core platform services provided by gatekeepers in particular business users and end-users of core platform services provided by gatekeepers should be afforded appropriate regulatory safeguards throughout the Union against the unfair behaviour of gatekeepers in order to facilitate cross-border business within the Union and thereby improve the proper functioning of the internal market and to address existing or likely emerging fragmentation in the specific areas covered by this Regulation. Moreover, while gatekeepers tend to adopt global or at least pan-European business models and algorithmic structures, they can adopt, and in some cases have adopted, different business conditions and practices in different Member States, which is liable to create disparities between the competitive conditions for the users of core platform services provided by gatekeepers, to the detriment of integration within the internal market. FI (Comments):

	The proposed amendment to Recital 7 clarifies the link between the rules for the Single Market on the one hand, and contestable and fair markets on the other; as well as to explain that "fairness" relates to also to consumers and end-users. BE (Drafting): (7) Therefore, the objective of this Regulation is to contribute to the proper functioning of the internal market, including through the achievement of a high level of consumer protection, by laying down rules to ensure contestability and fairness for the digital sector in general and for business users and end-users of core platform services provided by gatekeepers in particular. Business users and end-users of core platform services provided by gatekeepers should be afforded appropriate regulatory safeguards throughout the Union against the unfair behaviour of gatekeepers in order to facilitate cross-border business within the Union and thereby improve the proper functioning of the internal market and to address existing or likely emerging fragmentation in the specific areas covered by this Regulation. Moreover, while gatekeepers tend to adopt global or at least pan-European business models and algorithmic structures, they can adopt, and in some cases have adopted, different business conditions and practices in different Member States, which is liable to create disparities between the competitive conditions for the users

	of core platform services provided by gatekeepers, to the detriment of integration of the internal market. LU (Drafting): (7) Therefore**, the objective of this Regulation is to contribute to the proper functioning of the internal market by laying down rules to ensure contestability and fairness for the digital sector in general and for business users and end-users of core platform services provided by gatekeepers in particular. B**usiness users and end-users of core platform services provided by gatekeepers should be afforded appropriate regulatory safeguards throughout the Union against the unfair behaviour of gatekeepers in order to facilitate cross-border business within the Union and thereby improve the proper functioning of the internal market and to ~~address~~ **eliminate** existing or likely emerging fragmentation in the specific areas covered by this Regulation. Moreover, while gatekeepers tend to adopt global or at least pan-European business models and algorithmic structures, they can adopt, and in some cases have adopted, different business conditions and practices in different Member States, which is liable to create disparities between the competitive conditions for the users of core platform services provided by gatekeepers, to the detriment of integration within the internal market. LU (Comments): Full integration of the BE-LU proposal and alignment with amended Article 1 in order to reinforce the link between the legal basis, Article 114 TFEU, and the objectives and content of the DMA. We also propose to

	clarify the link between the rules for the Single Market on the one hand, and contestable and fair markets on the other; as well as to explain that "fairness" relates to also to consumers and end-users.
(8) By approximating diverging national laws, obstacles to the freedom to provide and receive services, including retail services, within the internal market should be eliminated. A targeted set of harmonised mandatory rules should therefore be established at Union level to ensure contestable and fair digital markets featuring the presence of gatekeepers within the internal market.	BE (Drafting): (8) By approximating diverging national laws, obstacles to the freedom to provide and receive services, including retail services, within the internal market should be eliminated. A targeted set of harmonised rules should therefore be established at Union level to ensure contestable and fair digital markets featuring the presence of gatekeepers within the internal market. LU (Drafting): (8) By approximating diverging national laws, obstacles to the freedom to provide and receive services, including retail services, within the internal market should be eliminated. A targeted set of harmonised ~~**mandatory**~~ rules should therefore be established at Union level to ensure contestable and fair digital markets featuring the presence of gatekeepers within the internal market. LU

	(Comments): Rules in a Regulation are by nature mandatory. Therefore we propose to delete the term "mandatory" in order to avoid casting any doubt on the binding or mandatory character of such rules.
(9) A fragmentation of the internal market can only be effectively averted if Member States are prevented from applying national rules which are specific to the types of undertakings and services covered by this Regulation. At the same time, since this Regulation aims at complementing the enforcement of competition law, it should be specified that this Regulation is without prejudice to Articles 101 and 102 TFEU, to the corresponding national competition rules and to other national competition rules regarding unilateral behaviour that are based on an 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 efficiency and objective justification arguments for the behaviour in question. However, the application of the latter rules should not affect the obligations imposed on gatekeepers under this Regulation and their uniform and effective application in the internal market.	BE (Drafting): (9) A fragmentation of the internal market can only be effectively averted if Member States are prevented from applying national rules which are within the scope of this Regulation. At the same time, since this Regulation aims at complementing the enforcement of competition law, it should be specified that this Regulation is without prejudice to Articles 101 and 102 TFEU, to the corresponding national competition rules and to other national competition rules regarding unilateral behaviour in a purely national context and that are based on an 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 efficiency and objective justification arguments for the behaviour in question. However, the application of the latter rules should not affect the obligations imposed on gatekeepers under this Regulation and their uniform and effective application in the internal market. AT (Drafting): (9) A fragmentation of the internal market can only be effectively averted if Member States are prevented from applying national rules

	which are specific to the types of undertakings and services covered by this Regulation **and which pursue the same goal as this Regulation that is ensuring contestable and fair markets. Rules that pursue other legitimate public interests, in compliance with Union law, can therefore be applied in parallel to the DMA. In particular Member States might impose obligations on undertakings, including providers of core platform services, to pursue for example the goals of consumer protection, the fight against acts of unfair competition or the defence of pluralism**. At the same time, since this Regulation aims at complementing the enforcement of competition law, it should be specified that this Regulation is without prejudice to Articles 101 and 102 TFEU, to the corresponding national competition rules and to other national competition rules regarding unilateral behaviour **including unilaterally determined contractual behaviour** that are based on an 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 efficiency and objective justification arguments for the behaviour in question. However, the application of the latter rules should not affect the obligations imposed on gatekeepers under this Regulation and their uniform and effective application in the internal market. AT (Comments):

	As the new text of Art. 1 (5) raises even more questions, we need to clarify in the recitals that the understanding, that Member states may impose obligations on undertakings, including gatekeepers (as the obligation is unrelated to the gatekeeper status), to pursue other legitimate public interests. This is especially important for us, e.g. in order to maintain a national narrow MFN clause in specific sectors. We therefore support the German comments on the first compromise text. Furthermore, we propose to clarify the term "unilateral conduct" and that "unilateral conduct" also includes unilaterally determined contractual relationships. In our view, this is important because in Austria we have the concept of relative market power. This means even if a company is not dominant on a market, it can still have a superior market position in relation to its clients or suppliers - with whom it usually has a contractual relationship. DE (Drafting): (9) A fragmentation of the internal market can only be effectively averted if Member States are prevented from applying national rules which are specific to the types of undertakings and services covered by this Regulation and which pursue the same goal as this Regulation that is ensuring contestable and fair markets. (X) Rules that pursue other legitimate public interests, in compliance with Union law, can therefore be applied in parallel to the DMA. In particular, Member States might impose obligations on undertakings, including providers of core platform, to pursue the goals of consumer protection, the

	fight against acts of unfair competition, or the protection of cultural and linguistic diversity and the defence of pluralism. (XX). ~~At the same time,~~ Since this Regulation aims at complementing the enforcement of competition law, it should be specified that this Regulation is without prejudice to Articles 101 and 102 TFEU, to the corresponding national competition rules and to other national competition rules regarding unilateral behaviour that are based on an 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 ~~efficiency~~ and objective justification arguments for the behaviour in question. This includes in particular stricter national laws within the sense of Article 3 of Council Regulation No 1/2003. However, the application of the latter rules should not affect the obligations imposed on gatekeepers under this Regulation and their uniform and effective application in the internal market in the sense that it may complement or increase the obligations contained it this act, but it may not provide a permission for a behaviour that is forbidden under this regulation. DE (Comments): Together Articles 1 (5) and 1 (6) regulate the relationship of the DMA with national law. However, the proposed recitals only concern Art. 1 (6).

	To clarify the meaning of Art. 1 (5) an additional recital should be included. It should explicitly stipulate that Member States are only prevented from applying national rules if the following prerequisites are given: • the rules are specific to gatekeepers in the sense of this Regulation and • the rules pursue the same goal as this Regulation that is ensuring contestable and fair markets. Another recital should clarify the meaning and reasoning of Art. 1 (6): We propose to delete the reference to "efficiency" as this might be misunderstood in such a way that "efficiencies" would be an additional/different category in the assessment of an abuse. In the case law of the European Courts, however, efficiencies are one sub-category of objective justification arguments (see e.g. ECJ C-209/10 Post Danmark, Paras 40 et seq.; EGC T-155/06 Tomra, Para. 224). [Alternatively, as a minimum solution, "and" must be replaced by "or"]. If, as pointed out by the Commission on several occasions, the DMA and competition law pursue different goals and are therefore complementary, enforcement action based on both regimes can complement each other and may therefore overlap. In this context, and also against the background of the ongoing ECJ cases with regard to the ne bis in idem principle, it is in our view crucial for an effective enforcement of both instruments to define more specifically what is meant with the words "should not affect the obligations imposed on gatekeepers under this Regulation". LU

	(Drafting): (9) A fragmentation of the internal market can only be effectively averted if Member States are prevented from applying national rules which are **within the scope of** ~~**specific to the types of undertakings and services covered by**~~this Regulation. At the same time, since this Regulation aims at complementing the enforcement of competition law, it should be specified that this Regulation is without prejudice to Articles 101 and 102 TFEU, to the corresponding national competition rules and to other national competition rules regarding unilateral behaviour **in a purely national context and** that are based on an 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 efficiency and objective justification arguments for the behaviour in question. However, the application of the latter rules should not affect the obligations imposed on gatekeepers under this Regulation and their uniform and effective application in the internal market. LU (Comments): Full integration of BE-LU proposal and alignment with amended Article 1(5).
(10) Articles 101 and 102 TFEU and the corresponding national competition rules concerning anticompetitive multilateral and unilateral conduct as well as merger control have as their objective the protection of undistorted competition on the market. This Regulation pursues an objective that is complementary to, but different from that of protecting undistorted competition on any given market, as defined in competition-law terms, which is to ensure that markets where gatekeepers are present	

are and remain contestable and fair, independently from the actual, likely or presumed effects of the conduct of a given gatekeeper covered by this Regulation on competition on a given market. This Regulation therefore aims at protecting a different legal interest from those rules and should be without prejudice to their application.	
(11) This Regulation should also complement, without prejudice to their application, the rules resulting from other acts of Union law regulating certain aspects of the provision of services covered by this Regulation, in particular Regulation (EU) 2019/1150 of the European Parliament and of the Council[4], Regulation (EU) xx/xx/EU [DSA] of the European Parliament and of the Council[5], Regulation (EU) 2016/679 of the European Parliament and of the Council[6], Directive (EU) 2019/790 of the European Parliament and of the Council[7], Directive (EU) 2015/2366 of the European Parliament and of the Council[8], and Directive (EU) 2010/13 of the European Parliament and of the Council[9], Directive	FI (Comments): In addition to Regulation (EU) 2016/679, the Recital 11 should include the Directive on privacy and electronic communications (Directive

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

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.

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

7 Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/ (OJ L 130, 17.5.2019, p. 92.).

8 Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (OJ L 337, 23.12.2015, p. 35).

9 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).

2005/29/EC[10] and Council Directive 93/13/EEC[11] as well as national rules aimed at enforcing or, as the case may be, implementing that Union legislation.	2002/58/EC). This proposal is made in accordance with many other points of the DMA Regulation that are referring to Directive 2002/58/EC in a corresponding way alongside with Regulation (EU) 2016/679.
(12) Weak contestability and unfair practices in the digital sector are more frequent and pronounced for certain digital services than for others. This is the case in particular for widespread and commonly used digital services that mostly directly intermediate between business users and end users and where features such as extreme scale economies, very strong network effects, an ability to connect many business users with many end users through the multi-sidedness of these services, lock-in effects, a lack of multi-homing or vertical integration are the most prevalent. Often, there is only one or very few large ~~providers of~~undertakings providing those digital services. These ~~providers of~~undertakings providing core platform services have emerged most frequently as gatekeepers for business users and end users with far-reaching impacts, gaining the ability to easily set commercial conditions and terms in a unilateral and detrimental manner for their business users and end users. Accordingly, it is necessary to focus only on those digital services that are most broadly used by business users and end users and where, based on current market conditions, concerns about weak contestability and unfair practices by gatekeepers are more apparent and pressing from an internal market perspective.	DK (Comments): We support the amendment. LT (Comments): We support the amendment.
(13) In particular, online intermediation services, online search engines, operating systems, online social networking, video sharing platform	DE

[10] Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive') (OJ L 149, 11.6.2005, p. 22–39).

[11] Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, (OJ L 95, 21.4.1993, p. 29–34).

services, number-independent interpersonal communication services, cloud computing services and online advertising services all have the capacity to affect a large number of end users and businesses alike, which entails a risk of unfair business practices. They therefore should be included in the definition of core platform services and fall into the scope of this Regulation. Online intermediation services may also be active in the field of financial services, and they may intermediate or be used to provide such services as listed non-exhaustively in Annex II to Directive (EU) 2015/1535 of the European Parliament and of the Council[12]. In certain circumstances, the notion of end users should encompass users that are traditionally considered business users, but in a given situation do not use the core platform services to provide goods or services to other end users, such as for example businesses relying on cloud computing services for their own purposes.	(Comments): We are currently still examining whether the definition of ancillary services should be further expanded or amended to cover, for example, streaming services and such. FR (Drafting): (13) In particular, online intermediation services, online search engines, web browsers, operating systems, online social networking, video sharing platform services, number-independent interpersonal communication services, cloud computing services and online advertising services all have the capacity to affect a large number of end users and businesses alike, which entails a risk of unfair business practices. They therefore should be included in the definition of core platform services and fall into the scope of this Regulation. Online intermediation services should be considered irrespective of the technology used to provide such services. In this sense, online intermediation services could also be provided by means of virtual assistant technology. Online intermediation services may also be active in the field of financial services, and they may intermediate or be used to provide such services as listed non-exhaustively in Annex II to

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

	Directive (EU) 2015/1535 of the European Parliament and of the Council. In certain circumstances, the notion of end users should encompass users that are traditionally considered business users, but in a given situation do not use the core platform services to provide goods or services to other end users, such as for example businesses relying on cloud computing services for their own purposes. FR (Comments): Web browsers: consistent with proposals in Article 2. The second addition clarifies - as is present in a recital of the Platform to Business Regulation - that voice assistance technology is a modality for the provision of online intermediation services. It is essential to clarify that voice assistants fall within the scope of regulation through their role in the provision of online intermediation services. Voice assistants may also reinforce a possible gatekeeper position on another essential platform service. In any case, the French authorities consider that virtual assistants, whatever their mode of use, should a priori be considered as covered by the DMA.
(14) A number of other ancillary services, such as identification or payment services and technical services which support the provision of	

payment services, may be provided by gatekeepers together with their core platform services. As gatekeepers frequently provide the portfolio of their services as part of an integrated ecosystem to which third-party providers of such ancillary services do not have access, at least not subject to equal conditions, and can link the access to the core platform service to take-up of one or more ancillary services, the gatekeepers are likely to have an increased ability and incentive to leverage their gatekeeper power from their core platform services to these ancillary services, to the detriment of choice and contestability of these services.	
(15) The fact that a digital service qualifies as a core platform service in light of its widespread and common use and its importance for connecting business users and end users does not as such give rise to sufficiently serious concerns of contestability and unfair practices. It is only when a core platform service constitutes an important gateway and is operated by ~~a provider~~an undertaking with a significant impact in the internal market and an entrenched and durable position, or by ~~a provider~~an undertaking that will foreseeably have such a position in the near future, that such concerns arise. Accordingly, the targeted set of harmonised rules laid down in this Regulation should apply only to undertakings designated on the basis of these three objective criteria, and they should only apply to those of their core platform services that individually constitute an important gateway for business users to reach end users.	DK (Comments): We support the amendments. LT (Comments): We support the amendments.
(16) In order to ensure the effective application of this Regulation to ~~providers of~~undertakings providing core platform services which are most likely to satisfy these objective requirements, and where unfair conduct weakening contestability is most prevalent and impactful, the Commission should be able to directly designate as gatekeepers those ~~providers of~~undertakings providing core platform services which meet certain quantitative thresholds. Such undertakings should in any event be subject to a fast designation process which should start ~~upon the entry into force of~~once this Regulation becomes applicable.	DK (Comments): We support the amendments. LT

	(Comments): We support the amendments.
(17) A very significant turnover in the Union and the provision of a core platform service in at least three Member States constitute compelling indications that the ~~provider of~~undertaking providing a core platform service has a significant impact on the internal market. This is equally true where ~~a provider of~~an undertaking providing a core platform service in at least three Member States has a very significant market capitalisation or equivalent fair market value. Therefore, ~~a provider of~~an undertaking providing a core platform service should be presumed to have a significant impact on the internal market where it provides a core platform service in at least three Member States and where either its group turnover realised in the EEA is equal to or exceeds a specific, high threshold or the market capitalisation of the group is equal to or exceeds a certain high absolute value. For ~~providers of~~undertakings providing core platform services that belong to undertakings that are not publicly listed, the equivalent fair market value above a certain high absolute value should be referred to. The Commission should use its power to adopt delegated acts to develop an objective methodology to calculate that value. A high EEA group turnover in conjunction with the threshold of users in the Union of core platform services reflects a relatively strong ability to monetise these users. A high market capitalisation relative to the same threshold number of users in the Union reflects a relatively significant potential to monetise these users in the near future. This monetisation potential in turn reflects in principle the gateway position of the undertakings concerned. Both indicators are in addition reflective of their financial capacity, including their ability to leverage their access to financial markets to reinforce their position. This may for example happen where this superior access is used to acquire other undertakings, which ability has in turn been shown to have potential negative effects on	DK (Comments): We support the amendments. LT (Comments): We support the amendments.

innovation. Market capitalisation can also be reflective of the expected future position and effect on the internal market of the ~~providers~~undertakings concerned, notwithstanding a potentially relatively low current turnover. The market capitalisation value can be based on a level that reflects the average market capitalisation of the largest publicly listed undertakings in the Union over an appropriate period.	
(18) A sustained market capitalisation of the ~~provider of~~undertaking providing core platform services at or above the threshold level over three or more years should be considered as strengthening the presumption that the ~~provider of~~undertaing providing core platform services has a significant impact on the internal market.	DK (Comments): We support the amendments. LT (Comments): We support the amendments.
(19) There may be a number of factors concerning market capitalisation that would require an in-depth assessment in determining whether ~~a provider of~~an undertaking providing core platform services should be deemed to have a significant impact on the internal market. This may be the case where the market capitalisation of the ~~provider of~~undertaking providing core platform services in preceding financial years was significantly lower than the average of the equity market, the volatility of its market capitalisation over the observed period was disproportionate to overall equity market volatility or its market capitalisation trajectory relative to market trends was inconsistent with a rapid and unidirectional growth.	DK (Comments): We support the amendments. LT (Comments): We support the amendments.

(20) A very high number of business users that depend on a core platform service to reach a very high number of monthly active end users allow the ~~provider of~~undertaking providing that service to influence the operations of a substantial part of business users to its advantage and indicate in principle that the ~~provider~~undertaking serves as an important gateway. The respective relevant levels for those numbers should be set representing a substantive percentage of the entire population of the Union when it comes to end users and of the entire population of businesses using platforms to determine the threshold for business users. Active end users and business users should be defined in a way to adequately represent the role and reach of the specific core platform service in question. In order to provide legal certainty for gatekeepers, elements ~~of such definitions~~to determine the number of active end users and business users per core platform service should be set out in an ~~annex~~Annex to this Regulation~~, which should~~ . Such elements can be ~~subject to possible amendment~~impacted by ~~the~~ technological and other developments. The Commission ~~via a~~should therefore be empowered to adopt delegated act to ~~be able to keep it up to date in~~adjust such elements of the ~~light of technical or other developments~~Annex to this Regulation to determine the number of active end users and business users.	DK (Comments): We support the amendments. However, we reserve to make further comments and adjustments after the publication of the Annex. LT (Comments): We support the amendments.
(21) An entrenched and durable position in its operations or the foreseeability of achieving such a position future occurs notably where the contestability of the position of the ~~provider of~~undertaking providing the core platform service is limited. This is likely to be the case where that ~~provider~~undertaking has provided a core platform service in at least three Member States to a very high number of business users and end users during at least three years.	DK (Comments): We support this amendment. LT (Comments): We support this amendment.

(22) Such thresholds can be impacted by market and technical developments. The Commission should therefore be empowered to adopt delegated acts to specify the methodology for determining whether the quantitative thresholds are met, and to regularly adjust it to market and technological developments where necessary. This is particularly relevant in relation to the threshold referring to market capitalisation, which should be indexed in appropriate intervals. Such delegated acts should not modify the quantitative thresholds set out in this Regulation.	DK (Comments): We support this amendment. LT (Comments): We fully support this amendment. At the same time, we have noticed that the new amendment in Art 3.5* is not reflected in the recital 22. *"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)."
(23) Undertakings providing core platform services which meet the quantitative thresholds but are able to present sufficiently substantiated arguments to demonstrate that, in the circumstances in which the relevant core platform services operate, they exceptionally do not fulfil the objective requirements for a gatekeeper although they meet all the quantitative thresholds, should not be designated directly, but only subject to a further investigation of those sufficiently substantiated arguments.	FI (Comments):

The burden of adducing evidence that the presumption deriving from the fulfilment of quantitative thresholds should not apply should be borne by the undertaking. In its assessment of the evidence and arguments produced, the Commission should take into account only the elements which directly relate to the quantitative requirements for constituting a gatekeeper, namely the impact of the undertaking on the internal market beyond revenue or market cap, such as its size in absolute terms, leadership in technology and number of Member States where it is present; by how much the actual business users and end users numbers exceed the thresholds and the importance of the undertaking's core platform service considering the overall size of the respective core platform service; and the number of years for which the thresholds have been met. Any justification on economic grounds seeking to demonstrate efficiencies deriving from a specific type of behaviour by the undertaking providing core platform services should be discarded, as it is not relevant to the designation as a gatekeeper. The Commission should be able to take a decision by relying on the quantitative thresholds where the undertaking significantly obstructs the investigation by failing to comply with the investigative measures taken by the Commission.	DE (Comments): We are still very sceptical; the criteria for a gatekeeper are specified in Art. 3 para. 1. The presumptions do not modify this substantial standard, which justifies subjecting these undertakings to stricter obligations than other non-gatekeeping companies.
(24) Provision should also be made for the assessment of the gatekeeper role of ~~providers of~~undertakings providing core platform services which do not satisfy all of the quantitative thresholds, in light of the overall objective requirements that they have a significant impact on the internal market, act as an important gateway for business users to reach end users and benefit from a durable and entrenched position in their operations or it is foreseeable that it will do so in the near future.	DK (Comments): We support the amendment. LT (Comments): We support the amendment.

(25) Such an assessment can only be done in light of a market investigation, while taking into account the quantitative thresholds. In its assessment the Commission should pursue the objectives of preserving and fostering the level of innovation, the quality of digital products and services, the degree to which prices are fair and competitive, and the degree to which quality or choice for business users and for end users is or remains high. Elements that are specific to the ~~providers of~~undertakings providing core platform services concerned, such as extreme scale or scope economies, very strong network effects, data-driven advantages, an ability to connect many business users with many end users through the multi-sidedness of these services, lock-in effects, conglomerate corporate structure or vertical integration, can be taken into account. In addition, a very high market capitalisation, a very high ratio of equity value over profit or a very high turnover derived from end users of a single core platform service can point to the tipping of the market or leveraging potential of such ~~providers~~undertakings. Together with market capitalisation, high relative growth rates~~,~~ are examples of dynamic parameters that are particularly relevant to identifying such ~~providers of~~undertakings providing core platform services that are foreseen to become entrenched. The Commission should be able to take a decision by drawing adverse inferences from facts available where the ~~provider~~undertaking significantly obstructs the investigation by failing to comply with the investigative measures taken by the Commission.	FI (Comments): Is conglomerate corporate structure supposed to mean something different than ecosystems mentioned in recitals 3 and 14? Additionally, FI sees that lack of multi-homing should be mentioned in this recital. DK (Comments): We support the amendments. LT (Comments): We support the amendments.
(26) A particular subset of rules should apply to those ~~providers of~~undertakings providing core platform services that are foreseen to enjoy an entrenched and durable position in the near future. The same specific features of core platform services make them prone to tipping: once ~~a~~an undertaking providing the service ~~provider~~ has obtained a certain advantage over rivals or potential challengers in terms of scale or intermediation power, its position may become unassailable and the situation may evolve to the point that it is likely to become durable and entrenched in the near future. Undertakings can try to induce this tipping	DK (Comments): We support the amendments. LT

and emerge as gatekeeper by using some of the unfair conditions and practices regulated in this Regulation. In such a situation, it appears appropriate to intervene before the market tips irreversibly.	(Comments): We support the amendments.
(27) However, such an early intervention should be limited to imposing only those obligations that are necessary and appropriate to ensure that the services in question remain contestable and allow to avoid the qualified risk of unfair conditions and practices. Obligations that prevent the ~~provider of~~undertaking providing core platform services concerned from achieving an entrenched and durable position in its operations, such as those preventing unfair leveraging, and those that facilitate switching and multi-homing are more directly geared towards this purpose. To ensure proportionality, the Commission should moreover apply from that subset of obligations only those that are necessary and proportionate to achieve the objectives of this Regulation and should regularly review whether such obligations should be maintained, suppressed or adapted.	LT (Comments): We support the amendment.
(28) This should allow the Commission to intervene in time and effectively, while fully respecting the proportionality of the considered measures. It should also reassure actual or potential market participants about the fairness and contestability of the services concerned.	
(29) Designated gatekeepers should comply with the obligations laid down in this Regulation in respect of each of the core platform services listed in the relevant designation decision. The mandatory rules should apply taking into account the conglomerate position of gatekeepers, where applicable. Furthermore, implementing measures that the Commission may by decision impose on the gatekeeper following a regulatory dialogue should be designed in an effective manner, having regard to the features of core platform services as well as possible circumvention risks and in compliance with the principle of proportionality and the fundamental rights of the undertakings concerned as well as those of third parties.	

(30) The very rapidly changing and complex technological nature of core platform services requires a regular review of the status of gatekeepers, including those that are foreseen to enjoy a durable and entrenched position in their operations in the near future. To provide all of the market participants, including the gatekeepers, with the required certainty as to the applicable legal obligations, a time limit for such regular reviews is necessary. It is also important to conduct such reviews on a regular basis and at least every two years. Furthermore, it is important to clarify that not every change of the facts on the basis of which an undertaking providing core platform services has been designated as a gatekeper will mean that the designation decision needs to be amended. This will only be the case if the changed facts also lead to a change in the assessment. Whether the latter is the case and the designation decision needs to be amended should be based on a case-by-case assessment of the individual facts and circumstances.	DK (Comments): We support the amendments. DE (Drafting): (30) The very rapidly changing and complex technological nature of core platform services requires a regular review of the status of gatekeepers, including those that are foreseen to enjoy a durable and entrenched position in their operations in the near future. To provide all of the market participants, including the gatekeepers, with the required certainty as to the applicable legal obligations, a time limit for such regular reviews is necessary. It is also important to conduct such reviews on a regular basis and at least every ~~two~~ four years. Furthermore, it is important to clarify that not every change of the facts on the basis of which an undertaking providing core platform services has been designated as a gatekeper will mean that the designation decision needs to be amended. This will only be the case if the changed facts also lead to a change in the assessment. Whether the latter is the case and the designation decision needs to be amended should be based on a case-by-case assessment of the individual facts and circumstances.

	DE (Comments): Recital needs to be amended in view of the changes to the text. Despite of that, we welcome the amendment in this recital. LT (Comments): Possible inconsistency with the operational part: Art 4, as amended by the Pres, now introduces 4 years' time for a regular review of gatekeeper status.
(31) To ensure the effectiveness of the review of gatekeeper status as well as the possibility to adjust the list of core platform services provided by a gatekeeper, the gatekeepers should inform the Commission of all of their intended and concluded acquisitions, prior to their implementation, of other ~~providers of~~undertakings providing core platform services or any other services provided within the digital sector. Such information should not only serve the review process mentioned above, regarding the status of individual gatekeepers, but will also provide information that is crucial to monitoring broader contestability trends in the digital sector and can therefore be a useful factor for consideration in the context of the market investigations foreseen by this Regulation. To ensure the necessary transparency and usefulness of such information for different purposes foreseen by this Regulation, gatekeepers should provide at least information about the undertakings concerned by the concentration, their EEA and worldwide annual turnover, their field of activity, including	FI (Comments): FI supports clarifying the content of the information. DK (Comments): We support this amendment. PT

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.	(Drafting): (31) To ensure the effectiveness of the review of gatekeeper status as well as the possibility to adjust the list of core platform services provided by a gatekeeper, the gatekeepers should inform the Commission of all of their intended and concluded acquisitions, prior to their implementation, of other ~~providers of~~undertakings providing core platform services or any other services provided within the digital sector. Such information should not only serve the review process mentioned above, regarding the status of individual gatekeepers, but will also provide information that is crucial to monitoring broader contestability trends in the digital sector and can therefore be a useful factor for consideration in the context of the market investigations foreseen by this Regulation. Furthermore, such information should be provided to Member States and in particular to national competition authorities, given the possibility of using the information for national merger control purposes and as under certain circumstances the latter may refer those acquisitions to the Commission for the purposes of merger control. To ensure the necessary transparency and usefulness of such information for different purposes foreseen by this Regulation, gatekeepers should provide at least information about the 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. PT (Comments): In line with proposal concerning Article 12(4). This is consistent with the purpose of using the information gathered under Article 12 for the purpose of national merger control rules and also with 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. FR (Drafting): (31) To ensure the effectiveness of the review of gatekeeper status as well as the possibility to adjust the list of core platform services provided by a gatekeeper, the gatekeepers should inform the Commission of all of their intended and concluded acquisitions, prior to their implementation, of other ~~providers of~~undertakings providing core platform services or any other services, in particular provided within the digital sector. Such

	information should not only serve the review process mentioned above, regarding the status of individual gatekeepers, but will also provide information that is crucial to monitoring broader contestability trends in the markets where gatekeepers operate, in particular in the digital sector and can therefore be a useful factor for consideration in the context of the market investigations foreseen by this Regulation. To ensure the necessary transparency and usefulness of such information for different purposes foreseen by this Regulation, gatekeepers should provide at least information about the 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. FR (Comments): The proposal aims to ensure that the Commission is able to monitor trends, in particular consolidation movements, on all markets where gatekeepers are active, given that the "digital sector" as defined in Article 2 of the Regulation is subject to particularly reinforced supervision. This amendment is to be linked to the proposal made in paragraph 1 of Article 12. It is pointed out that the definition of "services provided in the digital

	sector" could, moreover, give rise to legal uncertainty as to what this notion covers and raise difficulties for the effective application of Article 12. LT (Comments): We support this amendment.
(32) To safeguard the fairness and contestability of core platform services provided by gatekeepers, it is necessary to provide in a clear and unambiguous manner for a set of harmonised obligations with regard to those services. Such rules are needed to address the risk of harmful effects of unfair practices imposed by gatekeepers, to the benefit of the business environment in the services concerned, to the benefit of users and ultimately to the benefit of society as a whole. Given the fast-moving and dynamic nature of digital markets, and the substantial economic power of gatekeepers, it is important that these obligations are effectively applied without being circumvented. To that end, the obligations in question should apply to any practices by a gatekeeper, irrespective of its form and irrespective of whether it is of a contractual, commercial, technical or any other nature, insofar as a practice corresponds to the type of practice that is the subject of one of the obligations of this Regulation.	
(33) The obligations laid down in this Regulation are limited to what is necessary and justified to address the unfairness of the identified practices by gatekeepers and to ensure contestability in relation to core platform services provided by gatekeepers. Therefore, the obligations should correspond to those practices that are considered unfair by taking into account the features of the digital sector and where experience gained, for example in the enforcement of the EU competition rules, shows that they	FI (Comments): FI supports this addition.

have a particularly negative direct impact on the business users and end users. The obligations laid down in this regulation may specifically take into account the nature of the core platform services provided. In addition, it is necessary to provide for the possibility of a regulatory dialogue with gatekeepers to tailor those obligations that are likely to require specific implementing measures in order to ensure their effectiveness and proportionality. The obligations should only be updated after a thorough investigation on the nature and impact of specific practices that may be newly identified, following an in-depth investigation, as unfair or limiting contestability in the same manner as the unfair practices laid down in this Regulation while potentially escaping the scope of the current set of obligations. Where, following a market investigation, the Commission deems it necessary to modify essential elements of the present Regulation, such as the inclusion of new obligations that depart from the same contestability or fairness issues addressed by this Regulation, the Commission should advance a proposal to amend the Regulation.	DK (Comments): We support the amendment. FR (Drafting): 33) The obligations laid down in this Regulation are limited to what is necessary and justified to address the unfairness of the identified practices by gatekeepers and to ensure contestability in relation to core platform services provided by gatekeepers. Therefore, the obligations should correspond to those practices that are considered unfair by taking into account the features of the digital sector and where experience gained, for example in the enforcement of the EU competition rules, shows that they have a particularly negative direct impact on the business users and end users. The obligations laid down in this regulation may specifically take into account the nature of the core platform services provided. In addition, it is necessary to provide for the possibility of a regulatory dialogue with gatekeepers to tailor those obligations that are likely to require specific implementing measures in order to ensure their effectiveness and proportionality. The obligations should only be updated after a thorough investigation on the nature and impact of specific practices that may be

	newly identified, following an in-depth investigation, as unfair or limiting contestability in the same manner as the unfair practices laid down in this Regulation while potentially escaping the scope of the current set of obligations. Where, following a market investigation, the Commission deems it necessary to modify essential elements of the present Regulation, such as the inclusion of new obligations that depart from the same contestability or fairness issues addressed by this Regulation, the Commission should advance a proposal to amend the Regulation. In order to enhance the effectiveness of the updating process, the Commission should also use a claim reporting mechanism involving competitors, business users, end-users and Member States that would inform the Commission in the event of any of the behaviours stated above. FR (Comments): Amendment of the recital due to the proposed changes to Article 6.

	This addition makes it possible to introduce the existence of a reporting mechanism available to all players which will enable the Commission to be informed of malfunctions or new practices on the markets and which it will be able to rely on, among other things, in the context of updating the obligations of access controllers. LT (Comments): We support the amendment.
(34) The combination of these different mechanisms for imposing and adapting obligations should ensure that the obligations do not extend beyond observed unfair practices, while at the same time ensuring that new or evolving practices can be the subject of intervention where necessary and justified.	DE (Drafting): (34) The combination of these different mechanisms for imposing and

	adapting obligations should ensure that the obligations do not extend beyond observed unfair practices, while at the same time ensuring that new or evolving practices can be the subject of intervention ~~where~~ to the extent necessary and justified.
(35) The obligations laid down in this Regulation are necessary to address identified public policy concerns, there being no alternative and less restrictive measures that would effectively achieve the same result, having regard to need to safeguard public order, protect privacy and fight fraudulent and deceptive commercial practices.	
	DE (Comments): **As a general remark, we would like to hightlight that the reictals do not fully reflect the amendments to the text of the obligations. The wording should be aligned accordingly.**
(36) The conduct of combining end user data from different sources or signing in users to different services of gatekeepers gives them potential advantages in terms of accumulation of data, thereby raising barriers to entry. To ensure that gatekeepers do not unfairly undermine the contestability of core platform services, they should enable their end users to freely choose to opt-in to such business practices by offering a less personalised but equivalent alternative, and without making the core platform service or certain functionalities thereof conditional upon the end user's consent in the sense of Article 6(1)(a) of Regulation (EU) 2016/679. This should be without prejudice to the right of the gatekeeper to, subject to end user's consent according to Article 6(1)(a) of the	FI (Drafting): (36) The conduct of combining end user data from different sources or signing in users to different services of gatekeepers gives them potential advantages in terms of accumulation of data, thereby raising barriers to entry. To ensure that gatekeepers do not unfairly undermine the contestability of core platform services, they should enable their end users to freely choose to opt-in to such business practices by offering a less personalised but equivalent alternative, and without making the core

Regulation (EU) 2016/679, combine data or sign in users to a service under the legal basis established under Article 6(1) of Regulation (EU) 2016/679, with the exception of Articles 6(1)(b) and 6(1)(f) concerning processing necessary for the execution of a contract or for the purpose of a legitimate interest of the gatekeeper, which are explicitly excluded in this context to avoid the circumvention of this obligation. The less personalized alternative should not be different or of degraded quality compared to the service offered to the end users who provide consent to the combining of their personal data, unless the initial quality of the service provided precisely depends on the combination of such data. Also, this possibility of data combination should cover all possible sources of personal data, including own core platform services and other services offered by the gatekeeper as well as third party services (where data is obtained, for example, via cookies or like buttons included on third party websites). When the gatekeeper requests consent, it should proactively present a user-friendly solution to the end user to provide, modify or revoke consent in an explicit, clear and straightforward manner. Consent should be given by a clear affirmative act establishing a freely given, specific, informed and unambiguous indication of agreement by the end user. At the time of giving consent, the user should be informed that a refusal may lead to a less personalized offer, but that otherwise the core platform service will remain unchanged and that no functionalities will be suppressed. Lastly, the end user should be presented with the possibility of giving consent to these business practices on a granular basis for each of the core platform services and other services offered by the gatekeeper. End users should be also entitled to subsequently withdraw their consent, if previously provided.	platform service or certain functionalities thereof conditional upon the end user's consent in the sense of Article 6(1)(a) of Regulation (EU) 2016/679. **~~This should be without prejudice to the right of the gatekeeper to, subject to end user's consent according to Article 6(1)(a) of the Regulation (EU) 2016/679, combine data or sign in users to a service under the legal basis established under Article 6(1) of Regulation (EU) 2016/679, with the exception of Articles 6(1)(b) and 6(1)(f) concerning processing necessary for the execution of a contract or for the purpose of a legitimate interest of the gatekeeper, which are explicitly excluded in this context to avoid the circumvention of this obligation.~~** The less personalized alternative should not be different or of degraded quality compared to the service offered to the end users who provide consent to the combining of their personal data, unless the initial quality of the service provided precisely depends on the combination of such data. Also, this~~The~~ possibility of data combination should cover all possible sources of personal data, including own core platform services and other services offered by~~of~~ the gatekeeper as well as third party services (where data is obtained, for example, via cookies or like buttons included on third party websites).~~,~~ ~~and~~ When the gatekeeper requests consent, it should ~~be~~ proactively present~~ed~~ a user-friendly solution to the end user to provide, modify or revoke consent in an explicit, clear and straightforward manner. Consent should be given by a clear affirmative act establishing a freely given, specific, informed and unambiguous indication of agreement by the end user. At the time of giving consent, the user should be informed that a refusal may lead to a less personalized offer, but that otherwise the core platform service will remain unchanged and that no functionalities will be suppressed. Lastly, the end user should be presented with the possibility of giving consent to these business practices on a granular basis for each of the core platform services and other services offered by the gatekeeper. End users should be also entitled to subsequently withdraw their consent, if previously provided. FI

	(Comments): Finland considers that part of the additions overlaps with the GDPR regarding the consent. Therefore FI suggests deleting "This should be without prejudice to the right of the gatekeeper to, subject to end user's consent according to Article 6(1)(a) of the Regulation (EU) 2016/679, combine data or sign in users to a service under the legal basis established under Article 6(1) of Regulation (EU) 2016/679, with the exception of Articles 6(1)(b) and 6(1)(f) concerning processing necessary for the execution of a contract or for the purpose of a legitimate interest of the gatekeeper, which are explicitly excluded in this context to avoid the circumvention of this obligation." FI considers it reasonable to mention the possibility of end users to withdraw their consent. DE (Drafting): (36) The conduct of combining end user data from different sources or signing in users to different services of gatekeepers gives them potential advantages in terms of accumulation of data, thereby raising barriers to entry. To ensure that gatekeepers do not unfairly undermine the contestability of core platform services, they should enable their end users to freely choose to opt-in to such business practices by offering a less personalised but equivalent alternative, and without making the core platform service or certain functionalities thereof conditional upon the end

	user's consent (Art. 4 (11) ~~in the sense of Article 6(1)(a) of~~ Regulation (EU) 2016/679). ~~This should be without prejudice to the right of the gatekeeper to, subject to end user's consent according to Article 6(1)(a) of the Regulation (EU) 2016/679, combine data or sign in users to a service under the legal basis established under Article 6(1) of Regulation (EU) 2016/679, with the exception of Articles 6(1)(b) and 6(1)(f) concerning processing necessary for the execution of a contract or for the purpose of a legitimate interest of the gatekeeper, which are explicitly excluded in this context to avoid the circumvention of this obligation.~~ The less personalized alternative should not be different or of degraded quality compared to the service offered to the end users who provide consent to the combining of their personal data, unless the initial quality of the service provided precisely depends on the combination of such data. Also, this possibility of data combination should cover all possible sources of personal data, including own core platform services and other services offered by the gatekeeper as well as third party services (where data is obtained, for example, via web analytical tools, such as cookies or like buttons included on third party websites). When the gatekeeper requests consent, it should proactively present a user-friendly solution to the end user to provide, modify or revoke consent in an explicit, clear and straightforward manner. Consent should be given by a clear affirmative act establishing a freely given, specific, informed and unambiguous

	indication of agreement by the end user. At the time of giving consent, the user should be informed that a refusal may lead to a less personalized offer, but that otherwise the core platform service will remain unchanged and that no functionalities will be suppressed. Lastly, the end user should be presented with the possibility of giving consent to these business practices on a granular basis for each of the core platform services and other services offered by the gatekeeper. End users should be also entitled to subsequently withdraw their consent, if previously provided. DE (Comments): We have put forward a text proposal. The recital should be amended accordingly. Furthermore, we are concerned that the wording "in the sense of Article 6 (1) (a) of Regulation (EU) 2017/679" might lead to misunderstandings: - firstly, "in the sense of" seems to imply that Article 6 GDPR is only referred to in its "sense". However, the GDPR is and remains fully applicable; - secondly, Art. 4 (11) GDPR contains the actual definition of "consent"; thus, we suggest to add a reference to this definition in brackets. This would also be coherent with the new Art. 2 (26) that defines "consent" by referring to Art. 4 (11) GDPR. Finally, we do not see any use cases where legal obligations of gatekeepers or the protection of vital interests would make it necessary to combine personal data from different sources. Even considering public or national security interests, there would be no need to oblige gatekeepers to combine personal data. This could and should be achieved by competent authorities according to the purposes defined by law.

	LT (Comments): We support the amendment.
(37) Because of their position, gatekeepers might in certain cases restrict the ability of business users of their online intermediation services to offer their goods or services to end users under more favourable conditions, including price, through other online intermediation services. Such restrictions have a significant deterrent effect on the business users of gatekeepers in terms of their use of alternative online intermediation services, limiting inter-platform contestability, which in turn limits choice of alternative online intermediation channels for end users. To ensure that business users of online intermediation services of gatekeepers can freely choose alternative online intermediation services and differentiate the conditions under which they offer their products or services to their end users, it should not be accepted that gatekeepers limit business users from choosing to differentiate commercial conditions, including price. Such a restriction should apply to any measure with equivalent effect, such as for example increased commission rates or de-listing of the offers of business users.	FR (Drafting): (37) Because of their position, gatekeepers might in certain cases restrict the ability of business users of their online intermediation services to offer their goods or services to end users under more favourable conditions, including price, through other online intermediation services, their own interface or direct channel. Such restrictions have a significant deterrent effect on the business users of gatekeepers in terms of their use of alternative distributive channels online intermediation services, limiting inter-platform contestability, which in turn limits choice of alternative online intermediation channels for end users. To ensure that business users of online intermediation services of gatekeepers can freely choose alternative distributive channels including alternative online intermediation services and differentiate the conditions under which they offer their products or services to their end users, it should not be accepted that gatekeepers limit business users from choosing to differentiate commercial conditions, including price. Such a restriction should apply to any measure with equivalent effect, such as for example increased commission rates or de-listing of the offers of business users. FR

	(Comments): Consistency with the proposal in Article 5(b).
(38) To prevent further reinforcing their dependence on the core platform services of gatekeepers, and in order to promote multi-homing, the business users of these gatekeepers should be free in promoting and choosing the distribution channel they consider most appropriate to interact with any end users with whom the commercial relationship has previously been established either through core platform services provided by the gatekeeper or through other channels. Conversely, end users should also be free to choose offers of such business users and to enter into contracts with them either through core platform services of the gatekeeper, if applicable, or from a direct distribution channel of the business user or another indirect distribution channel such business user may use. This should apply to the promotion of offers and conclusion of contracts between business users and end users.	FI (Comments):
(38a) The ability of end users to acquire content, subscriptions, features or other items outside the core platform services of the gatekeeper should not be undermined or restricted. In particular, it should be avoided that gatekeepers restrict end users from access to and use of such services via a software application running on their core platform service. For example, subscribers to online content purchased outside a software application download or purchased from a software application store should not be prevented from accessing such online content on a software application on the gatekeeper's core platform service simply because it was purchased outside such software application or software application store.	
(39) To safeguard a fair commercial environment and protect the contestability of the digital sector it is important to safeguard the right of	FI

business users and end users to raise concerns about unfair behaviour by gatekeepers with any relevant administrative or other public authorities, including national courts. For example, business users and end users may want to complain about different types of unfair practices, such as discriminatory access conditions, unjustified closing of business user accounts or unclear grounds for product de-listings. Any practice that would in any way inhibit or hamper such a possibility of raising concerns or seeking available redress, for instance by means of confidentiality clauses in agreements or other written terms or unduly hamper by stipulating which steps to take first, should therefore be prohibited. This should be 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 complaints-handling mechanisms, including any use of alternative dispute resolution mechanisms or of the jurisdiction of specific courts in compliance with respective Union and national law. This should therefore also be without prejudice to the role gatekeepers play in the fight against illegal content online.	(Comments): LT (Comments): Still analysing Art 5-6 str.
(40) Identification services are crucial for business users to conduct their business, as these can allow them not only to optimise services, to the extent allowed under Regulation (EU) 2016/679 and Directive 2002/58/EC of the European Parliament and of the Council[13], but also to inject trust in online transactions, in compliance with Union or national law. Gatekeepers should therefore not use their position as ~~provider of~~undertakings providing core platform services to require their dependent business users to include any identification services provided by the gatekeeper itself as part of the provision of services or products by these business users to their end users, where other identification services are available to such business users.	DE (Comments): Recital should be amended in light of the amendments to the respective Articles. FR (Drafting):

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

	(40) Identification and ancillary services are crucial for the economic development of business users to conduct their business, for example, identification services ~~as these~~ can allow them not only to optimise services, to the extent allowed under Regulation (EU) 2016/679 and Directive 2002/58/EC of the European Parliament and of the Council33, but also to inject trust in online transactions, in compliance with Union or national law. Ancillary services on the other hand, and payment services for example, allow the innovation of an ecosystem of actors as well as choice for end users of such ancillary services. Gatekeepers should therefore not use their position as ~~provider of~~undertakings providing core platform services to require their dependent business users to include any ancillary and identification services provided by the gatekeeper itself as part of the provision of services or products by these business users to their end users, where other identification services are available to such business users. FR (Comments): To match the proposal made at article 5(e). The aim is to avoid being restricted to the ancillary services provided by the gatekeeper. LT (Comments): Question for clarification. The last sentence of a recital 40 could be read as a precondition to implement an obligation under Art 5e: "<…>*where other identification services are available to such business users*", although it is not the case in the Art 5e itself. How the last sentence of this

	recital should be interpreted? If the payment services are to stay in Art 5e, we ask the Pres for an additional explanation in the recital 40 on why the latter should also be considered as "*crucial for business users to conduct their business*" to be included in the obligations.
(41) The conduct of requiring business users or end users to subscribe to or register with any other core platform services of gatekeepers as a condition to access, sign up to or register for a core platform service gives the gatekeeper a means of capturing and locking-in new business users and end users for their core platform services by ensuring that business users cannot access one core platform service without also at least registering or creating an account for the purposes of receiving a second core platform service. This conduct also gives gatekeepers a potential advantage in terms of accumulation of data. As such, this conduct is liable to raise barriers to entry.	FI (Comments):
(42) The conditions under which gatekeepers provide online advertising services to business users including both advertisers and publishers are often non-transparent and opaque. This opacity is partly linked to the practices of a few platforms, but is also due to the sheer complexity of modern day programmatic advertising. The sector is considered to have become more non-transparent after the introduction of new privacy legislation, and is expected to become even more opaque with the announced removal of third-party cookies. This often leads to a lack of information and knowledge for advertisers and publishers about the conditions of the advertising services they purchased and undermines their ability to switch to alternative ~~providers of~~undertakings providing online advertising services. Furthermore, the costs of online advertising	FI (Comments):

are likely to be higher than they would be in a fairer, more transparent and contestable platform environment. These higher costs are likely to be reflected in the prices that end users pay for many daily products and services relying on the use of online advertising. Transparency obligations should therefore require gatekeepers to provide advertisers and publishers to whom they supply online advertising services, within one month after a request and to the extent possible, with information that allows both sides to understand the price paid for each of the different advertising services provided as part of the relevant advertising value chain.	
(43) A gatekeeper may in certain circumstances have a dual role as ~~a provider of~~an undertaking providing core platform services whereby it provides a core platform service to its business users, while also competing with those same business users in the provision of the same or similar services or products to the same end users. In these circumstances, a gatekeeper may take advantage of its dual role to use data, generated from transactions by its business users on the core platform, for the purpose of its own services that offer similar services to that of its business users. This may be the case, for instance, where a gatekeeper provides an online marketplace or app store to business users, and at the same time offer services as an online retailer or ~~provider of~~undertaking providing application software against those business users. To prevent gatekeepers from unfairly benefitting from their dual role, it should be ensured that they refrain from using any aggregated or non-aggregated data, which may include anonymised and personal data that is not publicly available to offer similar services to those of their business users. This obligation should apply to the gatekeeper as a whole, including but not limited to its business unit that competes with the business users of a core platform service.	DE (Comments): We are still concerned that referring to "in competition" will require Cion to engage in market delineation. Additionally, the wording of "gatekeeper as a whole" should either the clarified and put in relation to the respective undertaking or replaced with a concept used in the DMA, e.g. undertaking. FR (Drafting): (43) A gatekeeper may in certain circumstances have a dual role as ~~a provider of~~an undertaking providing core platform services whereby it provides a core platform service or an ancillary service to its business users, while also competing with those same business users in the

	provision of the same or similar services or products to the same end users. In these circumstances, a gatekeeper may take advantage of its dual role to use data, generated from transactions by its business users on the core platform, for the purpose of its own services that offer similar services to that of its business users. This may be the case, for instance, where a gatekeeper provides an online marketplace or app store to business users, and at the same time offer services as an online retailer or ~~provider of~~undertaking providing application software against those business users. To prevent gatekeepers from unfairly benefitting from their dual role, it should be ensured that they refrain from using any aggregated or non-aggregated data, which may include anonymised and personal data that is not publicly available to offer similar services to those of their business users. This obligation should apply to the gatekeeper as a whole, including but not limited to its business unit and ancillary services that competes with the business users of a core platform service. FR (Comments): To match the amendments made at article 6(a) by the PRSL.
(44) Business users may also purchase advertising services from ~~a~~	

~~provider of~~an undertaking providing core platform services for the purpose of providing goods and services to end users. In this case, it may occur that the data are not generated on the core platform service, but are provided to the core platform service by the business user or are generated based on its operations through the core platform service concerned. In certain instances, that core platform service providing advertising may have a dual role, as intermediary and as ~~provider of~~undertaking providing advertising services. Accordingly, the obligation prohibiting a dual role gatekeeper from using data of business users should apply also with respect to the data that a core platform service has received from businesses for the purpose of providing advertising services related to that core platform service.	
(45) In relation to cloud computing services, this obligation should extend to data provided or generated by business users of the gatekeeper in the context of their use of the cloud computing service of the gatekeeper, or through its software application store that allows end users of cloud computing services access to software applications. This obligation should not affect the right of gatekeepers to use aggregated data for providing ancillary data analytics services, subject to compliance with Regulation (EU) 2016/679 and Directive 2002/58/EC as well as with the relevant obligations in this Regulation concerning ancillary services.	LT (Comments): LT would be grateful to get an explanation on why: a) the condition ("This obligation should not affect the right of gatekeepers to use aggregated data for providing ancillary data analytics services, subject to compliance with Regulation (EU) 2016/679 <…>") is only possible in the context of the cloud computing services; b) the aforementioned condition was not included in the operation part.
(46) A gatekeeper can use different means to favour its own or third party services or products on an operating system it provides or effectively controls, to the detriment of the same or similar services that end users could obtain through third parties. This may for instance be the case where certain software applications or services are pre-installed by a gatekeeper. To enable end user choice, gatekeepers should not prevent end users from un-installing any pre-installed software applications on an operating system they provide or effectively control its core platform service and thereby favour their own or third party software applications.	FI (Comments): FR

	(Drafting): (46) A gatekeeper can use different means to favour its own or third party services or products on an operating system it provides or effectively controls, to the detriment of the same or similar services that end users could obtain through third parties. This may for instance be the case where certain software applications or services are pre-installed by a gatekeeper. To enable end user choice, gatekeepers should not exclusively enable their own core platform services as default services when alternative services can be proposed and should not prevent end users from un-installing any pre-installed software applications on an operating system they provide or effectively control its core platform service and thereby favour their own or third party software applications. FR (Comments): To match the proposal made at article 6(b).
(47) The rules that the gatekeepers set for the distribution of software applications may in certain circumstances restrict the ability of end users to install and effectively use third party software applications or software application stores on operating systems or hardware of the relevant gatekeeper and restrict the ability of end users to access these software applications or software application stores outside the core platform	

services of that gatekeeper. Such restrictions may limit the ability of developers of software applications to use alternative distribution channels and the ability of end users to choose between different software applications from different distribution channels and should be prohibited as unfair and liable to weaken the contestability of core platform services. In order 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 the gatekeeper concerned may implement necessary and proportionate technical or contractual measures to achieve that goal if the gatekeeper demonstrates that such measures are necessary and justified and that there are no less restrictive means to safeguard the integrity of the hardware or operating system.	
(48) Gatekeepers are often vertically integrated and offer certain products or services to end users through their own core platform services, or through a business user over which they exercise control which frequently leads to conflicts of interest. This can include the situation whereby a gatekeeper offers its own online intermediation services through an online search engine. When offering those products or services on the core platform service, gatekeepers can reserve a better position to their own offering of online intermediation services, online social networking services or video-sharing platform services, in terms of ranking, as opposed to the products of third parties also operating on that core platform service. This can occur for instance with products or services, including other core platform services, which are ranked in the results communicated by online search engines, or which are partly or entirely embedded in online search engines results, groups of results specialised in a certain topic, displayed along with the results of an online search engine, which are considered or used by certain end users as a service distinct or additional to the online search engine. Other instances are those of software applications which are distributed through software application stores, or products or services that are given prominence and display in the newsfeed of a social network, or products or services ranked	BE (Drafting): (48) Gatekeepers are often vertically integrated and offer certain products or services to end users through their own core platform services, or through a business user over which they exercise control which frequently leads to conflicts of interest. This can include the situation whereby a gatekeeper offers its own online intermediation services through an online search engine. When offering those products or services on the core platform service, gatekeepers can reserve a better position to their own offering or of their selected third parties of online intermediation services, online social networking services or video-sharing platform services, in terms of ranking, as opposed to the products of third parties also operating on that core platform service. This can occur for instance with products or services, including other core platform services, which are ranked in the results communicated by online search engines, or which are partly or entirely embedded in online search engines results, groups of results specialised in a certain topic, displayed along with the results of an online search engine, which are considered or used

in search results or displayed on an online marketplace. In those circumstances, the gatekeeper is in a dual-role position as intermediary for third party ~~providers~~undertakings and as ~~direct provider of~~undertaking directly providing products or services of the gatekeeper. Consequently, these gatekeepers have the ability to undermine directly the contestability for those products or services on these core platform services, to the detriment of business users which are not controlled by the gatekeeper.	by certain end users as a service distinct or additional to the online search engine. Other instances are those of software applications which are distributed through software application stores, or products or services that are given prominence and display in the newsfeed of a social network, or products or services ranked in search results or displayed on an online marketplace. In those circumstances, the gatekeeper is in a dual-role position as intermediary for third party ~~providers~~undertakings and as ~~direct provider of~~undertaking directly providing products or services of the gatekeeper. Consequently, these gatekeepers have the ability to undermine directly the contestability for those products or services on these core platform services, to the detriment of business users which are not controlled by the gatekeeper. BE (Comments): **BE:** this proposal is related to the suggested amendment in article 6.1.d. FR (Drafting): (48) Gatekeepers are often vertically integrated and offer certain products or services to end users through their own core platform services, or through a business user over which they exercise control which frequently leads to conflicts of interest. This can include the situation whereby a gatekeeper offers its own online intermediation services through an online search engine. When offering those products or services on the core platform service, gatekeepers can reserve a better position or a

	differentiated treatment to their own offering of online intermediation services, online social networking services or video-sharing platform services, in terms of ranking, as opposed to the products of third parties also operating on that core platform service. This can occur for instance with products or services, including other core platform services, which are ranked in the results communicated by online search engines, or which are partly or entirely embedded in online search engines results, groups of results specialised in a certain topic, displayed along with the results of an online search engine, which are considered or used by certain end users as a service distinct or additional to the online search engine. Other instances are those of software applications which are distributed through software application stores, or products or services that are given prominence and display in the newsfeed of a social network, or products or services ranked in search results or displayed on an online marketplace. In those circumstances, the gatekeeper is in a dual-role position as intermediary for third party ~~providers~~undertakings and as ~~direct provider of~~undertaking directly providing products or services of the gatekeeper. Consequently, these gatekeepers have the ability to undermine directly the contestability for those products or services on these core platform services, to the detriment of business users which are not controlled by the gatekeeper. FR

	(Comments): To match the proposal made at article 6(d). LT (Comments): Still analysing Art 5-6 str.
(49) In such situations, the gatekeeper should not engage in any form of differentiated or preferential treatment in ranking on the core platform service, whether through legal, commercial or technical means, in favour of products or services it offers itself or through a business user which it controls. To ensure that this obligation is effective, it should also be ensured that the conditions that apply to such ranking are also generally fair. Ranking should in this context cover all forms of relative prominence, including display, rating, linking or voice results. To ensure that this obligation is effective and cannot be circumvented it should also apply to any measure that may have an equivalent effect to the differentiated or preferential treatment in ranking. The guidelines adopted pursuant to Article 5 of Regulation (EU) 2019/1150 should also facilitate the implementation and enforcement of this obligation.[14]	FR (Drafting): (49) In such situations, the gatekeeper should not engage in any form of differentiated or preferential treatment in ranking, installation, activation, or default settings on the core platform service, whether through legal, commercial or technical means, in favour of products or services it offers itself or through a business user which it controls. To ensure that this obligation is effective, it should also be ensured that the conditions that apply to such ranking are also generally fair. Ranking should in this context cover all forms of relative prominence, including display, rating, linking or voice results. To ensure that this obligation is effective and cannot be circumvented it should also apply to any measure that may have an equivalent effect to the differentiated or preferential treatment in ranking. The guidelines adopted pursuant to Article 5 of Regulation (EU)

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

	2019/1150 should also facilitate the implementation and enforcement of this obligation.[15] FR (Comments): To match the proposal made at article 6(d). LT (Comments): LT: if we read the amendments made to Art 6.1d correctly, it might be necessary to adjust recital 49 to make it in line with those amendments: "(49) In such situations, the gatekeeper should not engage in any form of differentiated or preferential treatment in ranking on the core platform service, whether through legal, commercial or technical means, in favour of products or services it offers itself ~~or through a business user which it controls~~. <…>".
(50) Gatekeepers should not restrict or prevent the free choice of end users by technically or otherwise preventing switching between or subscription to different software applications and services. This would allow more ~~providers~~undertakings to offer their services, thereby ultimately providing greater choice to the end user. Gatekeepers should ensure a free choice irrespective of whether they are the manufacturer of	LT (Comments): Still analysing Art 5-6 str.

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

any hardware by means of which such software applications or services are accessed and shall not raise artificial technical or other barriers so as to make switching impossible or ineffective. The mere offering of a given product or service to consumers, including by means of pre-installation, as well as the improvement of the offering to end users, such as price reductions or increased quality, should not be construed as constituting a prohibited barrier to switching.	
(51) Gatekeepers can hamper the ability of end users to access online content and services including software applications. Therefore, rules should be established to ensure that the rights of end users to access an open internet are not compromised by the conduct of gatekeepers. Gatekeepers can also technically limit the ability of end users to effectively switch between different undertakings providing Internet access service ~~providers~~, in particular through their control over operating systems or hardware. This distorts the level playing field for Internet access services and ultimately harms end users. It should therefore be ensured that gatekeepers do not unduly restrict end users in choosing the undertaking providing their Internet access service ~~provider~~.	FR (Drafting): (51) Gatekeepers can hamper the ability of end users to access online content and services including software applications. Therefore, rules should be established to ensure that the rights of end users to access an open internet are not compromised by the conduct of gatekeepers. Gatekeepers can also technically limit the ability of end users to effectively switch between different undertakings providing Internet access service ~~providers~~, in particular through their control over operating systems or hardware, including using their virtual assistant, as well as through their cloud computing services. This distorts the level playing field for Internet access services and ultimately harms end users. It should therefore be ensured that gatekeepers do not unduly restrict end users in choosing the undertaking providing their Internet access service ~~provider~~. FR (Comments): To match the proposal made at article 6(e).

(52) Gatekeepers may also have a dual role as developers of operating systems and device manufacturers, including any technical functionality that such a device may have. For example, a gatekeeper that is a manufacturer of a device may restrict access to some of the functionalities in this device, such as near-field-communication technology and the software used to operate that technology, which may be required for the effective provision of an ancillary service by the gatekeeper as well as by any potential third party ~~provider of~~undertaking providing such an ancillary service. Such access may equally be required by software applications related to the relevant ancillary services in order to effectively provide similar functionalities as those offered by gatekeepers. If such a dual role is used in a manner that prevents alternative ~~providers of~~undertakings providing ancillary services or of software applications to have access under equal conditions to the same operating system, hardware or software features that are available or used in the provision by the gatekeeper of any ancillary services, this could significantly undermine innovation by ~~providers of~~undertakings providing such ancillary services as well as choice for end users of such ancillary services. The gatekeepers should therefore be obliged to ensure access under equal conditions 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.	DE (Drafting): (52) Gatekeepers may also have a dual role as developers of operating systems and device manufacturers, including any technical functionality that such a device may have. For example, a gatekeeper that is a manufacturer of a device may restrict access to some of the functionalities in this device, such as near-field-communication technology and the software used to operate that technology, which may be required for the effective provision of an ancillary service by the gatekeeper as well as by any potential third party ~~provider of~~undertaking providing such an ancillary service. Such access may equally be required by software applications related to the relevant ancillary services in order to effectively provide similar functionalities as those offered by gatekeepers. If such a dual role is used in a manner that prevents alternative ~~providers of~~undertakings providing ancillary services or of software applications to have access under equal conditions to the same operating system, hardware or software features that are available or used in the provision by the gatekeeper of any ancillary services, this could significantly undermine innovation by ~~providers of~~undertakings providing such ancillary services as well as choice for end users of such ancillary services. The gatekeepers should therefore be obliged to ensure access under equal conditions 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. With regard to payment services in particular, in accordance with national laws, access to near-field-communication technology of a device and the software used to operate that technology shall be limited to the cost of technical operation. DE

	(Comments): The proposal refers to the fact that so far charges for access to functionality of devices of gatekeepers are not regulated in the regulation. 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. Therefore, specifically in this context, we propose to clarify that these charges shall be limited strictly to the cost of technical operation and we propose the addition as highlighted. Moreover, to prevent possible deterring cost-effects in the field of payments (access to accounts) the European legislator has already included a provision in the Directive (EU) 2015/2366 ("PSD 2") according to which the provision of access shall not be dependent on the existence of a contractual relationship between the demander of access and the demanding opponent for that purpose. This provision could serve as a role-model for similar provisions in the DMA. Against this background, it is proposed that the Act refers to the charges in the context of payment services provided by near-field-communication technology of devices and therefore to mention it explicitly in the recitals. <u>Question:</u> We are wondering about the relationship of Art. 5 (cc) and Art. 6 (1) f) with a view to reader functionalities. Is our understanding correct, that according to Art. 6 (1) f) a gatekeeper would be obligated to allow the provider of an e-book reader app to use all the functionalities of the gatekeeper's device? FR

	(Drafting): (52) Gatekeepers may also have a dual role as developers of operating systems and device manufacturers, including any technical functionality that such a device may have. For example, a gatekeeper that is a manufacturer of a device may restrict access to some of the functionalities in this device, such as near-field-communication technology and the software used to operate that technology, which may be required for the effective provision of an ancillary service by the gatekeeper as well as by any potential third party ~~provider of~~undertaking providing such an ancillary service. Such access may equally be required by software applications related to the relevant ancillary services in order to effectively provide similar functionalities as those offered by gatekeepers. If such a dual role is used in a manner that prevents alternative ~~providers of~~undertakings providing ancillary services or of software applications to have access under equal conditions to 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, this could significantly undermine innovation by ~~providers of~~undertakings providing such ancillary services as well as choice for end users of such ancillary services. The gatekeepers should therefore be obliged to ensure access under equal conditions 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 of any ancillary services by the gatekeeper. FR (Comments): To match the proposal made at article 6(f).
(53) The conditions under which gatekeepers provide online advertising services to business users including both advertisers and publishers are often non-transparent and opaque. This often leads to a lack of information for advertisers and publishers about the effect of a given ad. To further enhance fairness, transparency and contestability of online advertising services designated under this Regulation as well as those that are fully integrated with other core platform services of the same ~~provider~~undertaking, the designated gatekeepers should therefore provide advertisers and publishers, when requested, with free of charge access to the performance measuring tools of the gatekeeper and the information, including aggregated data, necessary for advertisers, advertising agencies acting on behalf of a company placing advertising, as well as for publishers to carry out their own independent verification of the provision of the relevant online advertising services effectively.	FR (Drafting): (53) The conditions under which gatekeepers provide online advertising services to business users including both advertisers and publishers are often non-transparent and opaque. This often leads to a lack of information for advertisers and publishers about the effect of a given ad. To further enhance fairness, transparency and contestability of online advertising services designated under this Regulation as well as those that are fully integrated with other core platform services of the same ~~provider~~undertaking, the designated gatekeepers should therefore provide advertisers and publishers or third parties authorised by advertisers and publishers, when requested, with free of charge access to the performance measuring tools of the gatekeeper and the information, including aggregated data and performance data necessary for advertisers, advertising agencies acting on behalf of a company placing advertising, as well as for publishers to carry out their own independent verification of

	the provision of the relevant online advertising services effectively. FR (Comments): To match the proposal made at article 6(g).
(54) Gatekeepers benefit from access to vast amounts of data that they collect while providing the core platform services as well as other digital services. To ensure that gatekeepers do not undermine the contestability of core platform services as well as the innovation potential of the dynamic digital sector by restricting switching or multi-homing, end users should be granted effective and immediate access to the data they provided or that was generated through their activity on the relevant core platform services of the gatekeeper for the purposes of portability of the data in line with Regulation (EU) 2016/679. The data should be received in a format that can be immediately and effectively accessed and used by the end user or the relevant third party to which the data is ported. Gatekeepers should also ensure by means of appropriate technical measures, such as application programming interfaces, that end users or third parties authorised by end users can port the data continuously and in real time. This should apply also to any other data at different levels of aggregation that may be necessary to effectively enable such portability. Facilitating switching or multi-homing should lead, in turn, to an increased choice for ~~business users and~~ end users and an incentive for gatekeepers and business users to innovate.	LT (Comments): Still analysing Art 5-6 str. However, in our opinion, the recital 54 provides a clearer definition of the third party (the third party to which the data is ported) than used in the Art 6.1h (third parties authorised by an end user). Therefore, we suggest using this or similar definition in the operational part.
(55) Business users that use core platform services provided by gatekeepers and end users of such business users provide and generate a vast amount of data, including data inferred from such use. In order to ensure that business users have access to the relevant data thus generated,	FI

the gatekeeper should, upon their request, allow unhindered access, free of charge, to such data. Such access should also be given to third parties contracted by the business user, who are acting as processors of this data for the business user. Data provided or generated by the same business users and the same end users of these business users in the context of other services provided by the same gatekeeper may be concerned where this is inextricably linked to the relevant request. To this end, a gatekeeper should not use any contractual or other restrictions to prevent business users from accessing relevant data and should enable business users to obtain consent of their end users for such data access and retrieval, where such consent is required under Regulation (EU) 2016/679 and Directive 2002/58/EC. Gatekeepers should also ensure the continuous and real time access to these data by means of appropriate technical measures, such as for example putting in place high quality application programming interfaces.	(Comments): The text in the Recital 55 and its corresponding Article 6(1)(i) are not in line with each other. The Recital leaves it open-ended, if a consent is always required (…"**where** such consent is required"). In the corresponding Article, the text is much clearer on this. DE (Drafting): (55) Business users that use core platform services provided by gatekeepers and end users of such business users provide and generate a vast amount of data, including data inferred from such use. In order to ensure that business users have access to the relevant data thus generated, the gatekeeper should, upon their request, allow unhindered access, free of charge, to such data. Such access should also be given to third parties contracted by the business user, who are acting as processors of this data for the business user. Data provided or generated by the same business users and the same end users of these business users in the context of other services provided by the same gatekeeper may be concerned where this is inextricably linked to the relevant request. To this end, a gatekeeper should not use any contractual or other restrictions to prevent business users from accessing relevant data and should enable business users to obtain consent of their end users for such data access and retrieval, where such consent is required under Regulation (EU) 2016/679 and Directive

	2002/58/EC. Gatekeepers should also ensure the continuous and real time access to these data by means of appropriate technical measures, such as for example putting in place high quality application programming interfaces or enable an in-situ access of the data at the request of the business user. DE (Comments): The Recital appears to refer to consent within the meaning of the GDPR only where such consent is actually already required by the GDPR. At the same time, Art. 6 (1) i) appears to always require consent, regardless of the requirements of the GDPR. FR (Drafting): (55) Business users that use core platform services and ancillary services provided by gatekeepers and end users of such business users provide and generate a vast amount of data, including data inferred from such use. In order to ensure that business users have access to the relevant data thus generated, the gatekeeper should, upon their request, allow unhindered access, free of charge, to such data. Such access should also be given to third parties contracted by the business user, who are acting as

	processors of this data for the business user. Data provided or generated by the same business users and the same end users of these business users in the context of other services provided by the same gatekeeper may be concerned where this is inextricably linked to the relevant request. To this end, a gatekeeper should not use any contractual or other restrictions to prevent business users from accessing relevant data and should enable business users to obtain consent of their end users for such data access and retrieval, where such consent is required under Regulation (EU) 2016/679 and Directive 2002/58/EC. Gatekeepers should also ensure the continuous and real time access to these data by means of appropriate technical measures, such as for example putting in place high quality application programming interfaces. FR (Comments): To match the amendments made at article 6(i) by the PRSL.
(56) The value of online search engines to their respective business users and end users increases as the total number of such users increases. ~~Providers of~~Undertakings providing online search engines collect and store aggregated datasets containing information about what users searched for, and how they interacted with, the results that they were served. ~~Providers of~~Undertakings providing online search engine services collect these data from searches undertaken on their own online search	FI (Comments): Removing the text from Art. 6(1)(j) ("The relevant data is anonymised if

engine service and, where applicable, searches undertaken on the platforms of their downstream commercial partners. Access by gatekeepers to such ranking, query, click and view data constitutes an important barrier to entry and expansion, which undermines the contestability of online search engine services. Gatekeepers should therefore be obliged to provide access, on fair, reasonable and non-discriminatory terms, to these ranking, query, click and view data in relation to free and paid search generated by consumers on online search engine services to other ~~providers of~~undertakings providing such services, so that these third-party ~~providers~~undertakings can optimise their services and contest the relevant core platform services. Such access should also be given to third parties contracted by a search engine provider, who are acting as processors of this data for that search engine. When providing access to its search data, a gatekeeper should ensure the protection of the personal data of end users, including against possible re-identification risks, by appropriate means, such as annonymisation of such personal data, without substantially degrading the quality or usefulness of the data. 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 no longer identifiable.	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 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 of Recital 26 of the GDPR Regulation. LT (Comments): Still analysing Art 5-6 str.
(57) In particular gatekeepers which provide access to software application stores serve as an important gateway for business users that seek to reach end users. In view of the imbalance in bargaining power between those gatekeepers and business users of their software application stores, those gatekeepers should not be allowed to impose general conditions, including pricing conditions, data usage conditions or conditions related to the licensing of rights held by the business user, that would be unfair or lead to unjustified differentiation. Imposing conditions encompasses both explicit and implicit demands, by means of contract or	DE (Drafting): (57) Core platform services offered by ~~In particular~~ gatekeepers ~~which provide access to software application stores~~ serve as an important gateway for business users that seek to reach end users. In view of the

fact, including, for example, an online search engine making the raking results dependent on the transfer of certain rights or data. Pricing or other general access conditions should be considered unfair if they lead to an imbalance of rights and obligations imposed on business users or confer an advantage on the gatekeeper which is disproportionate to the service provided by the gatekeeper to business users or lead to a disadvantage for business users in providing the same or similar services as the gatekeeper. The following benchmarks can serve as a yardstick to determine the fairness of general access conditions: prices charged or conditions imposed for the same or similar services by other ~~providers of~~undertakings providing software application stores; prices charged or conditions imposed by the ~~provider of~~undertaking providing the software application store for different related or similar services or to different types of end users; prices charged or conditions imposed by the ~~provider of~~undertaking providing the software application store for the same service in different geographic regions; prices charged or conditions imposed by the ~~provider of~~undertaking providing the software application store for the same service the gatekeeper offers to itself. It should also be considered unfair if access to the service or the quality and other conditions of the service are made dependent on the transfer of data or the granting of rights by the business user which are unrelated to or not necessary for providing the core platform service. This obligation should not establish an access right and it should be without prejudice to the ability of ~~providers of~~undertakings providing software application stores to take the required responsibility in the fight against illegal and unwanted content as set out in Regulation [Digital Services Act].	imbalance in bargaining power between those gatekeepers and business users ~~of their software application stores~~, those gatekeepers should not be allowed to impose general conditions, ~~including~~ in particular pricing conditions, data usage conditions or conditions related to the licensing of rights held by the business user, that would be unfair or lead to unjustified differentiation. Imposing conditions encompasses both explicit and implicit demands, by means of contract or fact, including, for example, an online search engine making the raking results dependent on the transfer of certain rights or data. Pricing or other general access conditions should be considered unfair if they lead to an imbalance of rights and obligations imposed on business users or confer an advantage on the gatekeeper which is disproportionate to the service provided by the gatekeeper to business users or lead to a disadvantage for business users in providing the same or similar services as the gatekeeper. The following benchmarks can serve as a yardstick to determine the fairness of general access conditions: prices charged or conditions imposed for the same or similar services by other ~~providers of~~undertakings providing ~~software application stores~~ the relevant core platform service; prices charged or conditions imposed by the ~~provider of~~undertaking providing ~~the software application store for different~~ the core platform service for different related or similar services or to different types of end users; prices charged or conditions imposed by the ~~provider of~~undertaking providing the software application store for the

	same service in different geographic regions; prices charged or conditions imposed by the ~~provider of~~undertaking providing ~~the software application store~~ the core platform service for the same service the gatekeeper offers to itself. It should also be considered unfair if access to the service or the quality and other conditions of the service are made dependent on the transfer of data or the granting of rights by the business user which are unrelated to or not necessary for providing the core platform service. This obligation should not establish an access right and it should be without prejudice to the ability of ~~providers of~~undertakings providing software application stores to take the required responsibility in the fight against illegal and unwanted content as set out in Regulation [Digital Services Act].
(57a) Gatekeeepers can hamper the ability of business users and end users to unsubscribe from a core platform service that they have previously subscribed to. Therefore, rules should be established to avoid that gatekeepers undermine the rights of business users and end users to freely choose which core platform service they use. To safeguard free choice of business users and end users, a gatekeeper should not be allowed to make it unnecessarily difficult or complicated for business users or end users to unsubscribe from a core platform service.	DE (Comments): The recital seems to be repetitive and leaves some questions unanswered, in particular 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

	recital. LT (Comments): Still analysing Art 5-6 str.
(58) To ensure the effectiveness of the obligations laid down by this Regulation, while also making certain that these obligations are limited to what is necessary to ensure contestability and tackling the harmful effects of the unfair behaviour by gatekeepers, it is important to clearly define and circumscribe them so as to allow the gatekeeper to immediately comply with them, in full respect of applicable law, in particular Regulation (EU) 2016/679 and Directive 2002/58/EC, consumer protection, cyber security and product safety. The gatekeepers should ensure the compliance with this Regulation by design. The necessary measures should therefore be as much as possible and where relevant integrated into the technological design used by the gatekeepers. However, it may in certain cases be appropriate for the Commission, following a dialogue with the gatekeeper concerned, to further specify some of the measures that the gatekeeper concerned should adopt in order to effectively comply with those obligations that are susceptible of being further specified. This possibility of a regulatory dialogue should facilitate compliance by gatekeepers and expedite the correct implementation of the Regulation.	DK (Drafting): (58) To ensure the effectiveness of the obligations laid down by this Regulation, while also making certain that these obligations are limited to what is necessary to ensure contestability and tackling the harmful effects of the unfair behaviour by gatekeepers, it is important to clearly define and circumscribe them so as to allow the gatekeeper to immediately comply with them, in full respect of applicable law, in particular Regulation (EU) 2016/679 and Directive 2002/58/EC, consumer protection, cyber security and product safety. The gatekeepers should ensure the compliance with this Regulation by design. The necessary measures should therefore be as much as possible and where relevant integrated into the technological design used by the gatekeepers. In view of that, further specification should be possible where the implementation of an obligation in Article 6 can be affected by the presence of different business models or by the broad scope of application of the provision concerned. For this purpose, there should be the possibility for the gatekeeper to engage in a regulatory dialogue where the Commission will further specify some of the measures that the gatekeeper concerned should adopt in order to effectively comply with those obligations that are susceptible of being further specified. The Commission will nevertheless retain discretion in deciding when further specification should be

	provided. This will ensure that the regulatory dialogue is not used to circumvent the present regulation. Furthermore, the regulatory dialogue is without prejudice to the powers of the Commission to adopt a decision pursuant to Articles 25, 26 or 27. Such decisions will be normally adopted when the gatekeeper acts in bad faith during the regulatory dialogue. The possibility of a regulatory dialogue should thus facilitate compliance by gatekeepers and ensure the expedite and correct implementation of the Regulation. DK (Comments): We propose to amend Recital 58 to reflect the clarifications included on the regulatory dialogue under Art.7. LT (Drafting):
(58a) Within the timeframe for ~~implementing~~complying with their obligations under this Regulation, designated gatekeepers should inform the Commission about the measures they intend to implement or have implemented to ~~achieve effectiveness. Such~~ensure effective compliance with these obligations. A non-confidential version of such information should also be made available to interested third parties while taking into account the legitimate interest of ~~undertakings~~designated gatekeepers regarding the protection of their business secrets. Such transparency should be ensured through a mandatory ~~restitution~~reporting mechanism ~~providing two levels of information. A first level of restitution, dedicated~~. The designated gatekeeper should report to the Commission~~,~~ the measures	DK (Comments): We support the proposed amendments. DE (Drafting): (58a) Within the timeframe for ~~implementing~~complying with their

it intends to implement or it has implemented, to ensure compliance with ~~a high level of information and transparency,~~the obligations laid down in this Regulation, which should allow the Commission~~, when necessary, to trigger a procedure~~ to fulfil its duties under ~~Article 7(2) to clarify the obligations laid down in Article 6. The implementation of such a restitution mechanism should enable~~ this Regulation. In addition, the designated gatekeeper should publish and provide the Commission ~~to specify operationally, without delay, how each rule should apply to each gatekeeper. This restitution should not be regarded as meant to give way to an official clearance by the Commission. A second level of restitution, more synthetic and void of any business secrets, should be published,~~with a non-confidential version of such a report, in order to inform third parties about the measures it intends to implement or it has implemented ~~by the gatekeeper concerned and their impact on their relationships~~to ensure compliance with ~~it~~the obligations laid down in this Regulation. This publication should ~~also~~ enable ~~stakeholders~~third parties to check whether the designated gatekeeper ~~at stake fully~~ complies with the obligations laid down in ~~Articles 5 and 6~~this Regulation. Such reporting should be without prejudice to any enforcement action by the Commission.	obligations under this Regulation, designated gatekeepers should inform the Commission about the measures they intend to implement or have implemented to ~~achieve effectiveness. Such~~ensure effective compliance with these obligations. A non-confidential version of such information should also be made available to Member States, national competition authorities and interested third parties while taking into account the legitimate interest of ~~undertakings~~designated gatekeepers regarding the protection of their business secrets. Such transparency should be ensured through a mandatory ~~restitution~~reporting mechanism ~~providing two levels of information. A first level of restitution, dedicated~~. The designated gatekeeper should report to the Commission~~,~~ the measures it intends to implement or it has implemented, to ensure compliance with ~~a high level of information and transparency,~~the obligations laid down in this Regulation, which should allow the Commission~~, when necessary, to trigger a procedure~~ to fulfil its duties under ~~Article 7(2) to clarify the obligations laid down in Article 6. The implementation of such a restitution mechanism should enable~~ this Regulation. In addition, the designated gatekeeper should publish and provide the Commission ~~to specify operationally, without delay, how each rule should apply to each gatekeeper. This restitution should not be regarded as meant to give way to an official clearance by the Commission. A second level of restitution, more synthetic and void of any business secrets, should be published,~~with

	a non-confidential version of such a report, in order to inform third parties about the measures it intends to implement or it has implemented ~~by the gatekeeper concerned and their impact on their relationships~~to ensure compliance with ~~it~~the obligations laid down in this Regulation. This publication should ~~also~~ enable ~~stakeholders~~third parties to check whether the designated gatekeeper ~~at stake fully~~ complies with the obligations laid down in ~~Articles 5 and 6~~this Regulation. Such reporting should be without prejudice to any enforcement action by the Commission. LT (Comments): Although we maintain our position on excessive reporting, for the sake of compromise, we could support the amendments.
(59) As an additional element to ensure proportionality, gatekeepers should be given an opportunity to request the suspension, to the extent necessary, of a specific obligation in exceptional circumstances that lie beyond the control of the gatekeeper, such as for example an unforeseen external shock that has temporarily eliminated a significant part of end user demand for the relevant core platform service, where compliance with a specific obligation is shown by the gatekeeper to endanger the economic viability of the Union operations of the gatekeeper concerned.	DE (Comments): The relevant benchmark for "economic viability" should be further specified at least in the recitals, in particular given that many CPS are offered free of charge and/or are cross-subsidized by other services or over time.

(60) In exceptional circumstances justified on the limited grounds of public morality, public health or public security, as laid down in EU law and intepreted by the Court of Justice of the European Union, the Commission should be able to decide that the obligation concerned does not apply to a specific core platform service. Affecting these public interests can indicate that the cost to society as a whole of enforcing a certain obligation would in a certain exceptional case be too high and thus disproportionate. The regulatory dialogue to facilitate compliance with limited suspension and exemption possibilities should ensure the proportionality of the obligations in this Regulation without undermining the intended ex ante effects on fairness and contestability.	DK (Comments): We support the amendment. LT (Comments): We support the amendment.
(60a) Gatekeepers should not be allowed to circumvent their compliance with this Regulation. Therefore, it is important to prohibit any form of circumvention by an undertaking providing core platform services or a gatekeeper through behaviour that may be of contractual, commercial, technical or any other nature. For instance, an undertaking providing a core platform service should not artificially fragment this core platform service to circumevent the quantitative thresholds laid down in this regulation. By the same token, gatekeepers should not engage in behaviour that would undermine the effectiveness of the prohibitions and obligations laid down in this regulation, for instance, by using behavioural techniques, including for example dark patterns or interface design.	DK (Comments): We support the introduction of this new recital. DE (Drafting): (60a) Gatekeepers should not be allowed to circumvent their compliance with this Regulation. Therefore, it is important to prohibit any form of circumvention by an undertaking providing core platform services or a gatekeeper through behaviour that may be of contractual, commercial, technical or any other nature. For instance, an undertaking providing a core platform service should not artificially fragment this core platform service to ~~circumevent~~ circumvent the quantitative thresholds laid down in

	this regulation. By the same token, gatekeepers should not engage in behaviour that would undermine the effectiveness of the prohibitions and obligations laid down in this regulation, for instance, by using behavioural techniques, including for example dark patterns or interface design. DE (Comments): We welcome this new recital. But we are wondering whether to include a description or definition for the notion "dark patterns". LT (Comments): We support the new recital.
(61) The data protection and privacy interests of end users are relevant to any assessment of potential negative effects of the observed practice of gatekeepers to collect and accumulate large amounts of data from end users. Ensuring an adequate level of transparency of profiling practices employed by gatekeepers, including, but not limited to, profiling within the meaning of Article 4(4) of Regulation (EU) 2016/679, facilitates contestability of core platform services, by putting external pressure on gatekeepers to prevent making deep consumer profiling the industry standard, given that potential entrants or start-~~up providers cannot~~ups cannot access data to the same extent and depth, and at a similar scale. Enhanced transparency should allow other ~~providers of~~undertakings providing core platform services to differentiate themselves better through the use of superior privacy guaranteeing facilities. To ensure a minimum	FI (Comments): What other type of profiling this could be in addition to the profiling in the meaning of the GDPR? In the Art. 2(25) 'Profiling' means profiling as defined in Article 4(4) of Regulation (EU) 2016/679. DK (Comments):

level of effectiveness of this transparency obligation, gatekeepers should at least provide a description of the basis upon which profiling is performed, including whether personal data and data derived from user activity in line with Regulation (EU) 2016/679 is relied on, the processing applied, the purpose for which the profile is prepared and eventually used, the duration of the profiling, the impact of such profiling on the gatekeeper's services, and the steps taken to effectively enable end users to be aware of the relevant use of such profiling, as well as to seek their consent.	We support the proposed amendments. DE (Drafting): (61) The data protection and privacy interests of end users are relevant to any assessment of potential negative effects of the observed practice of gatekeepers to collect and accumulate large amounts of data from end users. Ensuring an adequate level of transparency of profiling practices employed by gatekeepers, including, but not limited to, profiling within the meaning of Article 4(4) of Regulation (EU) 2016/679, facilitates contestability of core platform services, by putting external pressure on gatekeepers to prevent making deep consumer profiling the industry standard, given that potential entrants or start-~~up providers cannot~~ups cannot access data to the same extent and depth, and at a similar scale. Enhanced transparency should allow other ~~providers of~~undertakings providing core platform services to differentiate themselves better through the use of superior privacy guaranteeing facilities. ~~To ensure a minimum level of effectiveness of this transparency obligation, gatekeepers should at least provide a description of the basis upon which profiling is performed, including whether personal data and data derived from user activity in line with Regulation (EU) 2016/679 is relied on, the processing applied, the purpose for which the profile is prepared and eventually used,~~

	~~the duration of the profiling, the impact of such profiling on the gatekeeper's services, and the steps taken to effectively enable end users to be aware of the relevant use of such profiling, as well as to seek their consent.~~ The gatekeepers must ensure a minimum level of effectiveness of this transparency obligation, by providing a description of the basis upon which profiling is performed, including whether personal data and data derived from user activity is relied on, the processing applied, the purpose for which the profile is prepared and eventually used, the duration of the profiling, the impact of such profiling on the gatekeeper's services, and the steps taken to effectively enable end users to be aware of the relevant use of such profiling and give, deny or withdraw their consent DE (Comments): We were wondering whether this added part is consistent with the definition in Art. 2, which refers for defining profiling exclusively to the GDPR. LT (Comments): We support the change. In addition, if we understand correctly, recital 61 refers to Art 13 and audit

	obligation regarding consumer profiling techniques. To ensure legal certainty, we would suggest technical addition: "To ensure a minimum level of effectiveness of this transparency obligation, gatekeepers should at least provide **to the Commission an independently audited** ~~a~~ description of the basis upon which profiling is performed,<…>".
(62) In order to ensure the full and lasting achievement of the objectives of this Regulation, the Commission should be able to assess whether ~~a provider of~~an undertaking providing core platform services should be designated as a gatekeeper without meeting the quantitative thresholds laid down in this Regulation; whether systematic non-compliance by a gatekeeper warrants imposing additional remedies; and whether the list of obligations addressing unfair practices by gatekeepers should be reviewed and additional practices that are similarly unfair and limiting the contestability of digital markets should be identified. Such assessment should be based on market investigations to be run in an appropriate timeframe, by using clear procedures and deadlines, in order to support the ex ante effect of this Regulation on contestability and fairness in the digital sector, and to provide the requisite degree of legal certainty.	DK (Comments): We support the proposed amendments. LT (Comments): We support the change.
(63) Following a market investigation, an undertaking providing a core platform service could be found to fulfil all of the overarching qualitative criteria for being identified as a gatekeeper. It should then, in principle, comply with all of the relevant obligations laid down by this Regulation. However, for gatekeepers that have been designated by the Commission as likely to enjoy an entrenched and durable position in the near future, the Commission should only impose those obligations that are necessary and appropriate to prevent that the gatekeeper concerned achieves an entrenched and durable position in its operations. With respect to such	DK (Comments): We support the proposed amendments. LT

emerging gatekeepers, the Commission should take into account that this status is in principle of a temporary nature, and it should therefore be decided at a given moment whether such ~~a provider of~~an undertaking providing core platform services should be subjected to the full set of gatekeeper obligations because it has acquired an entrenched and durable position, or conditions for designation are ultimately not met and therefore all previously imposed obligations should be waived.	(Comments): We support the change.
(64) The Commission should investigate and assess whether additional behavioural, or, where appropriate, structural remedies are justified, in order to ensure that the gatekeeper cannot frustrate the objectives of this Regulation by systematic non-compliance with one or several of the obligations laid down in this Regulation, which has further strengthened its gatekeeper position. This would be the case where the Commission has issued against a gatekeeper at least three non-compliance ~~or fining~~ decisions, which can concern three different core platform services and different obligations laid down in this Regulation, and if the gatekeeper's size in the internal market has further increased, economic dependency of business users and end users on the gatekeeper's core platform services has further strengthened as their number has further increased or the gatekeeper benefits from increased entrenchment of its position. The Commission should therefore in such cases have the power to impose any remedy, whether behavioural or structural, having due regard to the principle of proportionality. Structural remedies, such as legal, functional or structural separation, including the divestiture of a business, or parts of it, should only be imposed either where there is no equally effective behavioural remedy or where any equally effective behavioural remedy would be more burdensome for the undertaking concerned than the structural remedy. Changes to the structure of an undertaking as it existed before the systematic non-compliance was established would only be proportionate where there is a substantial risk that this systematic non-compliance results from the very structure of the undertaking concerned.	DK (Comments): We support the proposed amendment. FR (Drafting): (64) The Commission should investigate and assess whether additional behavioural, or, where appropriate, structural remedies are justified, in order to ensure that the gatekeeper cannot frustrate the objectives of this Regulation by systematic non-compliance with one or several of the obligations laid down in this Regulation. ~~which has further strengthened its gatekeeper position. This would be the case where the Commission has issued against a gatekeeper at least three non-compliance or fining decisions, which can concern three different core platform services and different obligations laid down in this Regulation, and if the gatekeeper's size in the internal market has further increased, economic dependency of~~

	~~business users and end users on the gatekeeper's core platform services has further strengthened as their number has further increased or the gatekeeper benefits from increased entrenchment of its position.~~ The Commission should therefore in such cases have the power to impose any remedy, whether behavioural or structural, having due regard to the principle of proportionality. Structural remedies, such as legal, functional or structural separation, including the divestiture of a business, or parts of it, should only be imposed either where there is no equally effective behavioural remedy or where any equally effective behavioural remedy would be more burdensome for the undertaking concerned than the structural remedy. Changes to the structure of an undertaking as it existed before the systematic non-compliance was established would only be proportionate where there is a substantial risk that this systematic non-compliance results from the very structure of the undertaking concerned. FR (Comments): Consistent with the amendment to Article 16. LT (Comments):

	We support the change.
	FR (Drafting): (64a) The Commission, following a 12-months market investigation, may impose proportionate and necessary injunctions from a limitative set of measures to safeguard the markets' contestability and fairness. The decision of the Commission would be guided by 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 procedure aims to complement the obligations set out in Articles 5 and 6. The 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. FR (Comments): Consistent with the amendment introducing an Article 16a allowing the Commission to open market investigations into tailor-made remedies to safeguard markets' contestability and fairness.
(65) The services and practices in core platform services and markets in which these intervene can change quickly and to a significant extent. To ensure that this Regulation remains up to date and constitutes an effective and holistic regulatory response to the problems posed by gatekeepers, it is important to provide for a regular review of the lists of core platform services as well as of the obligations provided for in this Regulation. This is particularly important to ensure that behaviour that may limit the	FR (Drafting): (65) The services and practices in core platform services and markets in which these intervene can change quickly and to a significant extent. To ensure that this Regulation remains up to date and constitutes an effective

contestability of core platform services or is unfair is identified. While it is important to conduct a review on a regular basis, given the dynamically changing nature of the digital sector, in order to ensure legal certainty as to the regulatory conditions, any reviews should be conducted within a reasonable and appropriate time-frame. Market investigations should also ensure that the Commission has a solid evidentiary basis on which it can assess whether it should propose to amend this Regulation in order to review, expand, or further detail, the lists of core platform services. They should equally ensure that the Commission has a solid evidentiary basis on which it can assess whether it should propose to amend the obligations laid down in this Regulation or whether it should adopt a delegated act updating such obligations.	and holistic regulatory response to the problems posed by gatekeepers, it is important to provide for a regular review of the lists of core platform services as well as of the obligations provided for in this Regulation. This is particularly important to ensure that behaviour that may limit the contestability of core platform services or is unfair is identified. While it is important to conduct a review on a regular basis, given the dynamically changing nature of the digital sector, in order to ensure legal certainty as to the regulatory conditions, any reviews should be conducted within a reasonable and appropriate time-frame. Market investigations should also ensure that the Commission has a solid evidentiary basis on which it can assess whether it should propose to amend this Regulation in order to review, expand, or further detail, the lists of core platform services. They should equally ensure that the Commission has a solid evidentiary basis on which it can assess whether it should propose to amend the obligations laid down in this Regulation or whether it should adopt a delegated act updating such obligations. In case of urgency where a risk of serious and immediate damage for business users or end-users of gatekeepers could result from new practices that may undermine contestability of core platform services or may be unfair, it is also important to ensure that the Commission can implement interim measures temporarily imposing obligations to the gatekeeper or gatekeepers concerned. These temporarily obligations should be limited to what is necessary and justified to avoid the materialization of the said risk. They should apply pending the conclusion of the market investigation and the corresponding final decision of the Commission pursuant to Article 17. FR (Comments): Consistent with the amendment to Article 22.

(66) In the event that gatekeepers engage in behaviour that is unfair or that limits the contestability of the core platform services that are already designated under this Regulation but without these behaviours being explicitly covered by the obligations, the Commission should be able to update this Regulation through delegated acts. Such updates by way of delegated act should be subject to the same investigatory standard and therefore following a market investigation. The Commission should also apply a predefined standard in identifying such behaviours. This legal standard should ensure that the type of obligations that gatekeepers may at any time face under this Regulation are sufficiently predictable.	
(67) Where, in the course of a proceeding into non-compliance or an investigation into systemic non-compliance, a gatekeeper offers commitments to the Commission, the latter should be able to adopt a decision making these commitments binding on the gatekeeper concerned, where it finds that the commitments ensure effective compliance with the obligations of this Regulation. This decision should also find that there are no longer grounds for action by the Commission.	
(68) In order to ensure effective implementation and compliance with this Regulation, the Commission should have strong investigative and enforcement powers, to allow it to investigate, enforce and monitor the rules laid down in this Regulation, while at the same time ensuring the respect for the fundamental right to be heard and to have access to the file in the context of the enforcement proceedings. The Commission should dispose of these investigative powers also for the purpose of carrying out market investigations for the purpose of updating and reviewing this Regulation.	
	FR (Drafting): (68a) : In order to support the Commission's powers in the

	implementation of the regulation, a reporting mechanism involving stakeholders such as business users and end-users should allow the Commission to receive useful information about gatekeepers' practices, markets' realities and trends, and contribute to reduce information asymmetries between the Commission and gatekeepers. The reporting mechanism should be 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 as not complying with it. These reports could also be used inter alia to support the Commission in taking a decision under Article 7 or to alert the Commission on a potential new provider of core platforms services that should be designated as gatekeeper. The Commission should have full discretion with respect to the possible follow-up actions required.Member States should have access to the reports and may, on the basis of such reports, request the Commission, pursuant to Article 33, to open market investigations or proceedings pursuant to Article 18. FR (Comments): To match the proposal of a new article 24a introducing a reporting mechanism.
(69) The Commission should be empowered to request information necessary for the purpose of this Regulation, throughout the Union. In particular, the Commission should have access to any relevant documents, data, database, algorithm and information necessary to open and conduct investigations and to monitor the compliance with the obligations laid down in this Regulation, irrespective of who possesses the documents, data or information in question, and regardless of their form or format, their storage medium, or the place where they are stored.	DE (Comments): The term "algorithm" should be defined in Art. 2 or at least the recital.

(70) The Commission should be able to directly request that undertakings or association of undertakings provide any relevant evidence, data and information. In addition, the Commission should be able to request any relevant information from competent authorities within the Member State, or from any natural person or legal person for the purpose of this Regulation. When complying with a decision of the Commission, undertakings are obliged to answer factual questions and to provide documents.	
(71) The Commission should also be empowered to undertake ~~onsite~~ inspections at the premises of any undertaking or association of undertakings and to interview any persons who may be in possession of useful information and to record the statements made.	DK (Comments): We support the proposed amendments. LT (Comments): We support the proposed amendments.
(71a) Interim measures can be an important tool to ensure that, while an investigation is ongoing, the infringement being investigated does not lead to serious and irreparable damage for business users or end users of gatekeepers. This tool is important to avoid developments that could be very difficult to reverse by a decision taken by the Commission at the end of the proceedings. The Commission should therefore have the power to impose interim measures by decision in the context of proceedings opened in view of the possible adoption of a decision of non-compliance. This power should apply in cases where the Commission has made a prima facie finding of infringement of obligations by gatekeepers and where there is a risk of serious and irreparable damage for business users or end	FR (Drafting): (71a) Interim measures can be an important tool to ensure that, while an investigation is ongoing, the infringement being investigated does not lead to serious and ~~irreparable~~ immediate damage for business users or end users of gatekeepers. This tool is important to avoid developments that could be very difficult to reverse by a decision taken by the Commission at the end of the proceedings. The Commission should therefore have the power to impose interim measures by decision in the context of

users of gatekeepers. A decision imposing interim measures should only be valid for a specified period, either until the conclusion of the proceedings by the Commission, or for a fixed time period which can be renewed insofar as it is necessary and appropriate.	proceedings opened in view of the possible adoption of a decision of non-compliance. This power should apply in cases where the Commission has made a prima facie finding of infringement of obligations by gatekeepers and where there is a risk of serious and ~~irreparable~~ immediate damage for business users or end users of gatekeepers. A decision imposing interim measures should only be valid for a specified period, either until the conclusion of the proceedings by the Commission, or for a fixed time period which can be renewed insofar as it is necessary and appropriate. FR (Comments): Consistent with the amendment to Article 22.
(72) The Commission should be able to take the necessary actions to monitor the effective implementation and compliance with the obligations laid down in this Regulation. Such actions should include the ability of the Commission to appoint independent external experts, such as and auditors to assist the Commission in this process, including where applicable from competent authorities of the Member States, such as data or consumer protection authorities.	
	LT (Drafting): **New recital 72a** **The Commission and Member States should cooperation and coordinate their actions necessary for the enforcement of this Regulation. When the present Regulation so establishes, Member States should ensure the human, financial, technical and technological resources necessary to perform the enforcement tasks by national competition authorities and other competent authorities. Different**

	means of financing may be considered for this purpose, such as financing from alternative sources other than the state budget. LT (Comments): LT: **Justification**: 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 COM to monitor the DMA obligations and measures, provide specific expertise or knowledge; - Art. 32a closely cooperate with COM while supporting market investigations; - Art. 37a(1) assisting COM through the Digital Markets Advisory Committee. Suggested provision would be similar to already existing in **ECN+ directive** 2019/1, e.g. recitals 24, 25, 26 and Art 5.
(73) Compliance with the obligations imposed under this Regulation should be enforceable by means of fines and periodic penalty payments. To that end, appropriate levels of fines and periodic penalty payments should also be laid down for non-compliance with the obligations and breach of the procedural rules subject to appropriate limitation periods.	
(74) In order to ensure effective recovery of fines imposed on associations of undertakings for infringements that they have committed, it is necessary to lay down the conditions on which the Commission may require payment of the fine from the members of the association where the association is not solvent.	
(75) In the context of proceedings carried out under this Regulation, the undertakings concerned should be accorded the right to be heard by the	BE

Commission and the decisions taken should be widely publicised. While ensuring the rights to good administration and the rights of defence of the undertakings concerned, in particular, the right of access to the file and the right to be heard, it is essential that confidential information be protected. Furthermore, while respecting the confidentiality of the information, the Commission should ensure that any information relied on for the purpose of the decision is disclosed to an extent that allows the addressee of the decision to understand the facts and considerations that led up to the decision. It is also necessary to ensure that the Commission only uses information collecte for the purposes of this Regulation. Finally, under certain conditions certain business records, such as communication between lawyers and their clients, may be considered confidential if the relevant conditions are met.	(Drafting): (75) In the context of proceedings carried out under this Regulation, the undertakings concerned should be accorded the right to be heard by the Commission and the decisions taken should be widely publicised. While ensuring the rights to good administration and the rights of defence of the undertakings concerned, in particular, the right of access to the file and the right to be heard, it is essential that confidential information be protected. Furthermore, while respecting the confidentiality of the information, the Commission should ensure that any information relied on for the purpose of the decision is disclosed to an extent that allows the addressee of the decision to understand the facts and considerations that led up to the decision. It is also necessary to ensure that the Commission only uses information collected for the purposes of this Regulation. Finally, under certain conditions certain business records, such as communication between lawyers and their clients, may be considered confidential if the relevant conditions are met. BE (Comments): Typing error
(75a) All decisions taken by the Commission under this Regulation are subject to review by the Court of Justice in accordance with the Treaty. In accordance with Article 261 thereof, the Court of Justice should have unlimited jurisdiction in respect of fines and penalty payments.	AT (Drafting): (75a) All decisions taken by the Commission under this Regulation are subject to review by the Court of Justice in accordance with the Treaty, **insofar as those decisions directly and individually concern any natural or legal person.** In accordance with Article 261 thereof, the Court of Justice should have unlimited jurisdiction in respect of fines and

	penalty payments. AT (Comments): As the DMA also provides for decision, which do not directly and inidividually concern the adressed party, e.g. opening of proceedings in Art. 18, we think it should be clarified in recital 75a that those are not subject to review by the Court of Justice.
(76) In order to ensure uniform conditions for the implementation of Articles 1, 3, 6, 7, 8, 9, 9a, 12, 13, 15, 16, 17, 22, 23, 25 and 30, implementing powers should be conferred on the Commission. Those powers should be *exercised* in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council[16].	
(76a) The examination procedure should be used for the adoption of an implementing act on the practical arrangements for the cooperation and coordination between the Commission and Member States. The advisory procedure should be used for remaining implementing acts envisaged by this Regulation. This is justified by the fact that these remaining implementing acts consider practical aspects of the procedures laid down in this Regulation, such as form, content and other details of various procedural steps as well as the practial arrangeements of different procedural steps, such as, for example, extension of procedural deadlines or right to be heard. The advisory procedure will also be followed for individual decisions adopted under this Regulation.	DK (Comments): We support the introduction of this new recital. LT (Comments):

[16] Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers, (OJ L 55, 28.2.2011, p. 13).

	We support the new recital.
(76b) The Commission may develop guidelines to provide further guidance on different procedural aspects of this Regulation or to assist undertakings providing core platform services in the implementation of the obligations under this Regulation. Such guidance may in particular be based on the experience that the Commission obtains through the monitoring of compliance with this Regulation. Issuing of any guidelines under this Regulation is a sole discretion and prerogative of the Commission and should not be considered as a constitutive element to ensure compliance with the obligations under this Regulation by the undertakings or association of undertakings concerned.	DK (Comments): We support the introduction of this new recital. SE (Drafting): The Commission may develop guidelines to provide further guidance on different procedural aspects of this Regulation or to assist undertakings providing core platform services in the implementation of the obligations under this Regulation and undertakings, especially SME:s, that act as business users. SE (Comments): 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. Their being able to do so is an important part of the effective application of DMA. LT

	(Comments): We support new recital.
(77) The advisory committee established in accordance with Regulation (EU) No 182/2011 should also deliver opinions on certain individual decisions of the Commission issued under this Regulation. In order to ensure contestable and fair markets in the digital sector across the Union where gatekeepers are present, the power to adopt acts in accordance with Article 290 of the Treaty should be delegated to the Commission to supplement this Regulation. In particular, delegated acts should be adopted in respect of the methodology for determining the quantitative thresholds for designation of gatekeepers under this Regulation and in respect of the update of the obligations laid down in this Regulation where, based on a market investigation the Commission has identified the need for updating the obligations addressing practices that limit the contestability of core platform services or are unfair. It is of particular importance that the Commission carries out appropriate consultations and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016[17]. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.	BE (Drafting): 77) The advisory committee established in accordance with Regulation (EU) No 182/2011 should also deliver opinions on certain individual decisions of the Commission issued under this Regulation. The Commission should of course be entitled to report on the opinion of the Advisory Committee, but without disclosing case related information received form ECN members. In order to ensure contestable and fair markets in the digital sector across the Union where gatekeepers are present, the power to adopt acts in accordance with Article 290 of the Treaty should be delegated to the Commission to supplement this Regulation. In particular, delegated acts should be adopted in respect of the methodology for determining the quantitative thresholds for designation of gatekeepers under this Regulation and in respect of the update of the obligations laid down in this Regulation where, based on a market investigation the Commission has identified the need for updating the obligations addressing practices that limit the contestability of core platform services or are unfair. It is of particular importance that the Commission carries out appropriate consultations and that those consultations be conducted in accordance with the principles laid down in

[17] Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making (OJ L 123, 12.5.2016, p.1).

	the Interinstitutional Agreement on Better Law-Making of 13 April 2016[18]. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts. BE (Comments): **BE:** suggestion for clarification. AT (Drafting): (77) The advisory committee established in accordance with Regulation (EU) No 182/2011 should also deliver opinions on certain individual decisions of the Commission issued under this Regulation. **The Commission shall be assisted by the advisory committee composed of representatives of the Member States. The Member States are entitled to decide who represents them in this advisory committee. The composition of the committee is flexible, depending on the topic to be dealt with.** In order to ensure contestable and fair markets in the digital sector across the Union where gatekeepers are present, the power to adopt

[18] Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making (OJ L 123, 12.5.2016, p.1).

	acts in accordance with Article 290 of the Treaty should be delegated to the Commission to supplement this Regulation. In particular, delegated acts should be adopted in respect of the methodology for determining the quantitative thresholds for designation of gatekeepers under this Regulation and in respect of the update of the obligations laid down in this Regulation where, based on a market investigation the Commission has identified the need for updating the obligations addressing practices that limit the contestability of core platform services or are unfair. It is of particular importance that the Commission carries out appropriate consultations and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016[19]. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts. AT (Comments): AT suggests a clarification in recital 77, that the Member States are free to decide who represents them in the Advisory Committee.

[19] Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making (OJ L 123, 12.5.2016, p.1).

	We understand that this is also clear from the Regulation 182/2011, nevertheless we assume that a clarification in the DMA is helpful. PT (Drafting): (77) The advisory committee established in accordance with Regulation (EU) No 182/2011 should also deliver opinions on certain individual decisions of the Commission issued under this Regulation. Considering the extent to which the enforcement experience under EU and national competition rules has informed the obligations imposed on gatekeepers in the present Regulation, Member States should be represented in the Committee by representatives of the respective competition authorities. In addition, if necessary Member States should be able to appoint an additional representative. This is without prejudice to members of the Committee being assisted by other experts from the Member States. In order to ensure contestable and fair markets in the digital sector across the Union where gatekeepers are present, the power to adopt acts in accordance with Article 290 of the Treaty should be delegated to the Commission to supplement this Regulation. In particular, delegated acts should be adopted in respect of the methodology for determining the quantitative thresholds for designation of gatekeepers under this Regulation and in respect of the update of the obligations laid down in this

	Regulation where, based on a market investigation the Commission has identified the need for updating the obligations addressing practices that limit the contestability of core platform services or are unfair. It is of particular importance that the Commission carries out appropriate consultations and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016[20]. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts. 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.

[20] Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making (OJ L 123, 12.5.2016, p.1).

	See also PT suggestion concerning a new Article 37a(1a).
(78) The Commission should periodically evaluate this Regulation and closely monitor its effects on the contestability and fairness of commercial relationships in the online platform economy, in particular with a view to determining the need for amendments in light of relevant technological or commercial developments. This evaluation should include the regular review of the list of core platform services and the obligations addressed to gatekeepers as well as enforcement of these, in view of ensuring that digital markets across the Union are contestable and fair. In order to obtain a broad view of developments in the sector, the evaluation should take into account the experiences of Member States and relevant stakeholders. The Commission may in this regard also consider the opinions and reports presented to it by the Observatory on the Online Platform Economy that was first established by Commission Decision C(2018)2393 of 26 April 2018. Following the evaluation, the Commission should take appropriate measures. The Commission should to maintain a high level of protection and respect for the common EU rights and values, particularly equality and non-discrimination, as an objective when conducting the assessments and reviews of the practices and obligations provided in this Regulation.	DE (Comments): For the sake of clarity, the recital should clarify the relationship between the review under Art. 38 and the market investigation into new services and practices under Art. 17.
	FR (Drafting): (77bis) 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. Indeed, the Commission should remain primarily responsible for the enforcement of DMA. However, national competition authorities may complement these enforcement actions. For this purpose, national competition authorities may make use of the relevant investigative and monitoring powers of this

	Regulation on their own initiative. Upon referral by the Commission, they shall also be entitled to enforce the obligations of the present Regulation. The Commission and national competition authorities should closely cooperate and coordinate their actions via the European Competition Network. This ensures that the Regulation can be swiftly and effectively enforced, 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. FR (Comments): To match with the joint proposed amendement (DE/NL/FR) of Chapitre X (*Cooperation and coordination with national competition authorities*) for complementary national enforcement.
(79) The objective of this Regulation is to ensure a contestable and fair digital sector in general and core platform services in particular, with a view to promoting innovation, high quality of digital products and services, fair and competitive prices, as well as a high quality and choice for end users in the digital sector. This cannot be sufficiently achieved by the Member States, but can only, by reason of the business model and operations of the gatekeepers and the scale and effects of their operations, be fully achieved at Union level. The Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.	
This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union, in particular Articles 16, 47 and 50 thereof.	

Accordingly, this Regulation should be interpreted and applied with respect to those rights and principles.	
	General comments
	DK (Comments): We reserve to provide further comments on the recitals corresponding to Articles 5, 6, 10 and 32a, since we are still analysing these provisions. DE (Comments): In this commentary, we have focused on those amendments that could be well integrated into the current proposal and we refrained from repeating our text proposals. Therefore, our recital commentary is not exhaustive. In particular, we have not put forward proposals would require far-reaching changes in the recitals at this point or which would be redundant. Therefore, as a general remark we would like to underline that the recitals should be amended accordingly to align them to our text proposals. 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).
END	**END**