

Chapter I

Subject matter, scope and definitions

COMP A (Art 1) covering AMs 25, 26, 285-300

Article 1

Subject-matter and scope

1. ***The purpose of this Regulation is to contribute to the proper functioning of the internal market by laying (AM 25) down harmonised rules ensuring contestable and fair markets with a level playing field in the digital sector across the Union where gatekeepers are present (AM 286, 289).***
2. ***In order to strengthen the proper functioning of the internal market, this Regulation (AM 289) shall apply to core platform services provided or offered by gatekeepers to business users established in the Union or end users established or located in the Union, irrespective of the place of establishment or residence of the gatekeepers and irrespective of the law otherwise applicable to the provision of service.***
3. This Regulation shall not apply to markets:
 - (a) related to electronic communications networks as defined in point (1) of Article 2 of Directive (EU) 2018/1972 of the European Parliament and of the Council¹;
 - (b) related to electronic communications services as defined in point (4) of Article 2 of Directive (EU) 2018/1972 other than those related to interpersonal communication services as defined in point (4)(b) of Article 2 of that Directive.
4. With regard to interpersonal communication services this Regulation is without prejudice to the powers and tasks granted to the national regulatory and other competent authorities by virtue of Article 61 of Directive (EU) 2018/1972.
5. Member States shall not impose on gatekeepers further obligations by way of laws, regulations or administrative action for the purpose of ensuring contestable and fair markets. This is without prejudice to rules pursuing other legitimate public interests, in compliance with Union law. In particular, nothing in this Regulation precludes Member States from imposing obligations, which are compatible with Union law, on undertakings, including providers of core platform services where these obligations are unrelated to the relevant undertakings having a status of gatekeeper within the meaning of this Regulation in order to protect consumers or to fight against acts of unfair competition.

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

6. This Regulation is without prejudice to the application of Articles 101 and 102 TFEU. It is also without prejudice to the application of: national rules prohibiting anticompetitive agreements, decisions by associations of undertakings, concerted practices and abuses of dominant positions; national competition rules prohibiting other forms of unilateral conduct insofar as they are applied to undertakings other than gatekeepers or amount to imposing additional obligations on gatekeepers; Council Regulation (EC) No 139/2004² and national rules concerning merger control; Regulation (EU) 2019/1150 and Regulation (EU) .../.. of the European Parliament and of the Council³. ***It is as well without prejudice to Council Directive 93/13/EEC⁴, Directive 2002/58/EC⁵, Directive 2005/29/EC and of the European Parliament and of the Council⁶, Regulation (EU) 2016/679⁷, Regulation (EU) 2019/1150⁸.*** (AM 297, 298, 299)
7. National authorities shall not take decisions which would run counter to a decision adopted by the Commission under this Regulation. The Commission and Member States shall work in close cooperation and coordination in their enforcement actions.

COMP B (Art 2) covering AMs 27-34, 301-356

*Article 2
Definitions*

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

- (1) ‘Gatekeeper’ means a provider of core platform services designated pursuant to Article 3;

² Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) (OJ L 24, 29.1.2004, p. 1).

³ Regulation (EU) .../.. of the European Parliament and of the Council – proposal on a Single Market For Digital Services (Digital Services Act) and amending Directive 2000/31/EC.

⁴ Reference not provided in AM 296, but should be ***Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts.***

⁵ ***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).***

⁶ Reference not provided in AM 296, but should be ***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’).***

⁷ ***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) and 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).***

⁸ ***Directive (EU) 2019/882 of the European Parliament and of the Council of 17 April 2019 on the accessibility requirements for products and services.***

- (2) ‘Core platform service’ means any of the following:
- (a) online intermediation services;
 - (b) online search engines;
 - (c) online social networking services;
 - (ca) web browsers;** (AM 27, 302, 319, 320, 324)
 - (cb) virtual assistants;** (AM 28, 305, 312, 313?, 318, 322, 323)
 - (d) video-sharing platform services;
 - (e) number-independent interpersonal communication services;
 - (f) operating systems;
 - (g) Infrastructure as a Service, **software as a service and other** cloud computing services **including business to business cloud, enterprise software, applications, and solution services;** (AM 29, 307, 308)
 - (h) advertising services, including any advertising networks, advertising exchanges and any other advertising intermediation services, provided by **any undertaking of the** provider of any of the core platform services listed in points (a) to (g); (AM 315)
- (3) ‘Information society service’ means any service within the meaning of point (b) of Article 1(1) of Directive (EU) 2015/1535;
- (3a) ‘Virtual assistant’ means software that responds to oral or written commands expressed in non-technical natural language by end users and performs tasks or services, such as search queries or accessing and interacting with other digital services on behalf of the end user, independently or through IT systems including voice based apps and voice assistants;** (AM 30, 329, 336)
- (4) ‘Digital sector’ means the sector of products and services provided by means of or through information society services;
- (5) ‘Online intermediation services’ means services as defined in point 2 of Article 2 of Regulation (EU) 2019/1150;
- (6) ‘Online search engine’ means a digital service as defined in point 5 of Article 2 of Regulation (EU) 2019/1150;
- (7) ‘Online social networking service’ means a platform that enables end users to connect, share, discover and communicate with each other across multiple devices and, in particular, via chats, posts, videos and recommendations;
- (7a) ‘Web browser’ means software applications used by users of client PCs, smart mobile devices and other devices which allow end users to access and interact with web content hosted on servers that are connected to networks such as the internet, including standalone web browsers as well as web browsers integrated or embedded in software or similar;** (AM 31, 326, 333, 335)

- (8) ‘Video-sharing platform service’ means a service as defined in point (aa) of Article 1(1) of Directive (EU) 2010/13⁹;
- (9) ‘Number-independent interpersonal communications service’ means a service as defined in point 7 of Article 2 of Directive (EU) 2018/1972;
- (10) ‘Operating system’ means a system software which controls the basic functions of the hardware or software and enables software applications to run on it;
- (10 a) *"Software as a service" means a method of software delivery in which software is accessed online via a subscription;***
- (11) ‘Cloud computing services’ means a digital service as defined in point 19 of Article 4 of Directive (EU) 2016/1148 of the European Parliament and of the Council¹⁰;
- (12) ‘Software application stores’ means a type of online intermediation services, which is focused on software applications as the intermediated product or service;
- (13) ‘Software application’ means any digital product or service that runs on an operating system;
- (14) ‘Ancillary service’ means services provided in the context of or together with core platform services, including payment services as defined in point 3 of Article 4 and technical services which support the provision of payment services as defined in Article 3(j) of Directive (EU) 2015/2366, **payment aggregation services**, fulfilment, identification or advertising services;
- (14a) *‘Payment aggregation services’ means technical services within the meaning of Article 3(j) of Directive (EU) 2015/2366 of the European Parliament and of the Council allowing end users to ~~enroll~~ initiate and execute payment services within the meaning of Article 4(3) of Directive (EU) 2015/2366 of the European Parliament and of the Council provided by ~~different~~ one or more Payment Service Providers on the basis of a contractual relationship between the payment aggregation service provider and the ~~third party~~ payment service providers whose payment services are aggregated. (AM 348)***
- (15) ‘Identification service’ means a type of ancillary services that enables any type of verification of the identity of end users or business users, regardless of the technology used;
- (16) ‘End user’ means any natural or legal person using core platform services other than as a business user;
- (17) ‘Business user’ means any natural or legal person acting in a commercial or professional capacity using core platform services for the purpose of or in the course of providing goods or services to end users;

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).

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

- (18) 'Ranking' means the relative prominence given to goods or services offered *or provided* through online intermediation services, *operating systems, video-sharing platform services, web browsers, including software application stores and virtual assistants*, or online social networking services, or the relevance given to search results by online search engines, as presented, organised or communicated by the providers of *such* services respectively, whatever the technological means used for such presentation, organisation or communication; (AM 33, 342, 343)
- (18 a) *"Search result" means any information presented in any format, including texts, graphics, videos, voice or other output, returned in response and related to any written, oral or equivalent search query, irrespective of whether it constitutes an organic result, a paid result, a direct answer or any product, service or information offered in connection with, or displayed along with, or partly or entirely embedded in the results interface;* (AM 344, 350)
- (19) 'Data' means any digital representation of acts, facts or information and any compilation of such acts, facts or information, including in the form of sound, visual or audiovisual recording;
- (20) 'Personal data' means any information as defined in point 1 of Article 4 of Regulation (EU) 2016/679;
- (21) 'Non-personal data' means data other than personal data as defined in point 1 of Article 4 of Regulation (EU) 2016/679;
- (22) 'Undertaking' means all linked enterprises or connected undertakings that form a group through the direct or indirect control of an enterprise or undertaking by another and that are engaged in an economic activity, regardless of their legal status and the way in which they are financed;
- (22 a) *"Provider of a core platform service" means an entity or part thereof, irrespective of their legal form, which provide any of the core platform services listed in paragraph 2 to business users or end users.* (AM 352)
- (23) 'Control' means the possibility of exercising decisive influence on an undertaking, as understood in Regulation (EU) No 139/2004;
- (23 a) *"Consent" of the data subject means any freely given, specific, informed and unambiguous indication of the data subject's wishes as defined in Article 4(11) of Regulation (EU) 2016/679.*
- (23b) 'Turnover' means the amount derived by an undertaking as set out in Article 5(1) of Regulation (EC) No 139/2004. (AM 34)

Chapter II

Gatekeepers

COMP C (Art 3) covering AMs 35-43, 357-425

Article 3

Designation of gatekeepers

1. A provider of core platform services shall be designated as gatekeeper if:
 - (a) it has a significant impact on the internal market;
 - (b) it operates a core platform service which serves as an important gateway for business users; and (AM 360, 361)
 - (c) it enjoys an entrenched and durable position in its operations or it is foreseeable that it will enjoy such a position ~~in the near future~~. (AM 35)
2. A provider of core platform services shall be presumed to satisfy:
 - (a) the requirement in paragraph 1 point (a) where the undertaking to which it belongs achieves an annual EEA turnover equal to or above EUR 6.5 billion in the last three financial years, or where the average market capitalisation or the equivalent fair market value of the undertaking to which it belongs amounted to at least EUR 65 billion in the last financial year, and it provides a core platform service in at least **two** Member States; (AM 365, 367 partly)
 - (b) the requirement in paragraph 1 point (b) where it provides **one or more** core platform **services** that has more than 45 million monthly active end users established or located in the Union and more than 10 000 yearly active business users established in the Union **during** the last financial year; (AM 369, 370)

for the purpose of the first subparagraph, monthly active end users shall refer to the average number of monthly active end users throughout the largest part of the last financial year; monthly active end users shall be measured taking into account the indicators set out in the Annex to this Regulation. (AM 368)
 - (c) the requirement in paragraph 1 point (c) where the thresholds in point (b) were met in each of the last **two** financial years. (AM 374, 375, 376)
3. Where a provider of core platform services meets all the thresholds in paragraph 2, it shall notify the Commission thereof **without undue delay and no later than 45 days** after those thresholds are satisfied and provide it with the relevant information identified in paragraph 2. That notification shall include the relevant information **relating to the quantitative thresholds** identified in paragraph 2 for each of the core platform services of the provider that meets the thresholds in paragraph 2 point (b). The notification shall be updated whenever other core platform services individually meet the thresholds in paragraph 2 point (b). (AM 36, 379, 380, 381)

Should the Commission consider that an undertaking providing core platform services meets all the thresholds provided in paragraph 2, but has failed to notify the required information pursuant to the first subparagraph of this paragraph, the Commission shall require that pursuant to Article 19 the undertaking provide the relevant information relating to the quantitative thresholds identified in paragraph 2 within 30 days. The failure by the undertaking providing core platform services to comply with the Commission's request shall not prevent the Commission from designating that undertaking as a gatekeeper based on any other information available to the Commission. Where the undertaking providing core platform services complies with the request, the Commission shall apply the procedure set out in paragraph 4 at any time). (AM 383, 384)

4. The Commission shall, without undue delay and at the latest **40 working** days after receiving the complete information referred to in paragraph 3, designate the provider of core platform services that meets all the thresholds of paragraph 2 as a gatekeeper, unless that provider, with its notification, presents sufficiently substantiated arguments to demonstrate that, in the circumstances in which the relevant core platform service operates, and taking into account the elements listed in paragraph 6, the provider *exceptionally* does not satisfy the requirements of paragraph 1 **although it meets all the thresholds set out in paragraph 2.** (AM 37, 388, 389)

Where the *provider of core platform services* presents such sufficiently substantiated arguments to demonstrate that it *exceptionally* does not satisfy the requirements *set out in* paragraph 1 **although it meets all the thresholds set out in paragraph 2**, the Commission shall *designate that provider as a gatekeeper, in accordance with the procedure laid down in Article 15(3), if it concludes that the provider was not able to demonstrate that the relevant core platform service it provides does not satisfy the requirements set out in* paragraph 1. (AM. 38)

Where the provider of a core platform service that satisfies the quantitative thresholds set out in paragraph 2 fails to comply with the investigative measures ordered by the Commission and the failure persists after the provider has been invited to comply within a reasonable time and to submit the relevant information the Commission shall be entitled to designate that provider as a gatekeeper (AM 39, 392)

5. The Commission is empowered to adopt delegated acts in accordance with Article 37 to specify the methodology for determining whether the quantitative thresholds laid down in paragraph 2 are met, and to regularly adjust it to market and technological developments where necessary, in particular as regards the threshold in paragraph 2, point (a).
6. The Commission may identify as a gatekeeper, in accordance with the procedure laid down in Article 15, any provider of core platform services that meets each of the requirements of paragraph 1, but does not satisfy each of the thresholds of paragraph 2, ~~or has presented sufficiently substantiated arguments in accordance with paragraph 4.~~ (AM 40)

For that purpose, the Commission shall take into account the following elements:

- (a) the size, including turnover and market capitalisation, operations and position of the provider of core platform services as well as their share of the market relevant to their core platform services; (AM 396, 397)
- (b) the number of business users depending on the core platform service to reach end users and the number of end users;
- (c) entry barriers derived from network effects and data driven advantages, in particular in relation to the provider's access to and collection of personal and non-personal data or analytics capabilities; this would include *the employment of data-intelligence to coordinate, organise and control the entire set of activities and actors involved, often described as digital ecosystems*. (AM 406)
- (d) scale and scope effects the provider benefits from, including with regard to data;
- (e) *entrenched lack of choice*, business user or end user *dependency or lock-in and users' ability to use similar services simultaneously*; (AM 400, 401)
- (f) other *relevant business or service characteristics, such as a conglomerate corporate structure or vertical integration, including whether there are other gatekeepers identified pursuant to paragraph 2, within the same undertaking providing core platform services, for instance allowing cross subsidisation or combination of data from different sources*. (AM 41, 404, 405)

In conducting its assessment, the Commission shall take into account foreseeable developments of these elements.

Where the provider of a core platform service that satisfies the quantitative thresholds of paragraph 2 fails to comply with the investigative measures ordered by the Commission in *within 2 months* and the failure persists after the provider has been invited to comply within *3 months* and to submit observations, the Commission shall be entitled to designate that provider as a gatekeeper *based on the facts available*. (AM 42)

Where the provider of a core platform service that does not satisfy the quantitative thresholds of paragraph 2 fails to comply with the investigative measures ordered by the Commission and the failure persists after the provider has been invited to comply within *2 months* and to submit observations, the Commission shall be entitled to designate that provider as a gatekeeper based on facts available. (AM 43)

7. For each gatekeeper identified pursuant to paragraph 4 or paragraph 6, the Commission shall identify *within the deadline set under paragraph 4* the relevant undertaking to which it belongs and list the relevant core platform services that are provided within that same undertaking and which individually serve as an important gateway for business users *and end users* to reach end users as referred to in paragraph 1(b). (AM 417)
8. The gatekeeper *shall notify the Commission of the measures that it intends to implement to ensure compliance with the obligations laid down in Articles 5 and 6 after a core platform service has been included in the list pursuant to paragraph 7 of this Article and* shall comply with the obligations laid down in Articles 5 and 6 as

*soon as possible, and in any case no later than four months after a core platform service has been included in the list pursuant to paragraph 7 of this Article. **If a gatekeeper fails to comply with the obligations within these four months, consequences set out in Articles 25 and 26 shall be considered.*** (AM 419, 420, 421, 422, 423, 424)

COMP D (Art 4) covering AMs 44, 426-428

Article 4

Review of the status of gatekeepers

1. The Commission may upon request or its own initiative reconsider, amend or repeal at any moment a decision adopted pursuant to Article 3 for one of the following reasons:
 - (a) there has been a substantial change in any of the facts on which the decision was based;
 - (b) the decision was based on incomplete, incorrect or misleading information provided by the undertakings.
2. The Commission shall regularly, and at least every 4 years, review whether the designated gatekeepers continue to satisfy the requirements laid down in Article 3(1), **and at least every year** whether new providers of core platform services satisfy those requirements. The regular review shall also examine whether the list of affected core platform services of the gatekeeper needs to be adjusted. **Those reviews shall not have any suspending effect on the obligations.** (AM 426)

Where the Commission, on the basis of that review pursuant to the first subparagraph, finds that the facts on which the designation of the providers of core platform services as gatekeepers was based, have changed, it shall adopt a corresponding decision
3. The Commission shall publish and update the list of gatekeepers and the list of the core platform services for which they need to comply with the obligations laid down in Articles 5 and 6 on an on-going basis. **The Commission shall report on the findings of its monitoring activities in its annual report on Competition Policy.** (AM 44, 428)