

COMP G covering AMs 64-68 & 587-620 & 584

Article 7

Compliance with obligations for gatekeepers

1. The measures implemented by the gatekeeper to ensure **full** compliance with the obligations laid down in Articles 5 and 6 shall be effective in achieving the objective of the relevant obligation **and the objectives of this Regulation, namely safeguarding contestability and fairness for business users as well as end users. The gatekeeper shall be responsible for, and be able to demonstrate full compliance with those obligations ('accountability'), in particular when defending its measures on the grounds of efficiency. Within six months after its designation and in application of Article 3(8), the gatekeeper shall notify those measures to the Commission and shall provide the Commission with a report describing those measures in a detailed and transparent manner and demonstrating how they ensure compliance with those obligations.** The gatekeeper shall ensure that they are implemented in compliance with Regulation (EU) 2016/679, Directive 2002/58/EC and Regulation XX on a Single Market for Digital Services, and with legislation on cyber security, consumer protection and product safety.. (64 587 589 592 593)
- 1a. **Within five months after its designation pursuant to Article 3, the gatekeeper shall publish and provide the Commission with a non-confidential summary of the report referred to in paragraph 1 of this Article. The Commission shall publish without delay the non-confidential summary of the report. This non-confidential summary shall be updated each time the report referred to in paragraph 1 of this Article is updated.** (65)
2. Where the Commission finds that the measures that the gatekeeper intends to implement pursuant to paragraph 1, or has implemented, do not ensure effective compliance with the relevant obligations laid down in Article 6, it may by decision specify the measures that the gatekeeper concerned shall implement. The Commission shall adopt such a decision within **five** months from the opening of proceedings pursuant to Article 18. **The decision shall be published. Publication shall have regard to the legitimate interest of undertakings in the protection of their business secrets.** (597 598 604)
3. Paragraph 2 of this Article is without prejudice to the powers of the Commission under Articles 25, 26 and 27. **In case of a non-compliance decision under Article 25 resulting in fines and penalties under Article 26 or periodic penalty payments in accordance with Article 27, the period of non-compliance shall be presumed to start from the deadline set under Article 3(8).** (603)
4. In view of adopting the decision under paragraph 2, the Commission shall communicate its preliminary findings **to the gatekeeper** within **two** months from the opening of the proceedings. In the preliminary findings, the Commission shall explain the measures it considers to take or it considers that the provider of core

platform services concerned should take in order to effectively address the preliminary findings. *The Commission may consult interested third parties demonstrating sufficient interest when drafting the preliminary findings. The preliminary findings shall be made public.* (67 605 606 609 584)

5. In specifying the measures under paragraph 2, the Commission shall ensure that the measures are effective in achieving the objectives of the relevant obligation and proportionate in the specific circumstances of the gatekeeper and the relevant service.
6. For the purposes of specifying the obligations under Article 6(1) points (j) and (k), the Commission shall also assess whether the intended or implemented measures ensure that there is no remaining imbalance of rights and obligations on business users and that the measures do not themselves confer an advantage on the gatekeeper which is disproportionate to the service provided by the gatekeeper to business users.
 - 6 a. *For the purposes of specifying the obligations under point (f) of Article 6(1) ~~point (f)~~, the gatekeeper shall, in cooperation with business users and end user representatives, define the open technologies, open standards and open protocols, including the technical interface (Application Programming Interface), that allows end users of competing software and services and business users to connect to the gatekeeper's core service and to interoperate with it, and shall inform the Commission of these technologies, standards and protocols. This is without prejudice to the right of the Commission to apply paragraph 2 of this Article in circumstances where there are concerns that such technologies, standards and protocols would not ensure effective compliance with the obligations laid down in point (f) of Article 6(1).* (612)
7. *To ensure effective compliance with the obligations laid down in this Regulation, within one month after its effective designation, a gatekeeper may, prior to the implementation deadline of Article 3(8), request the opening of proceedings pursuant to Article 18 for the Commission to determine whether the measures that the gatekeeper intends to implement or has implemented are **proportionate and** effective in achieving the objective of the relevant obligation in the specific circumstances A gatekeeper **shall**, with its request, provide a reasoned submission to explain in particular why the measures that it intends to implement or has implemented are **proportionate and** effective in **complying with** the relevant obligation in the specific circumstances. **In the preparation of its position following this request of the gatekeeper, the Commission may consult third parties such as business users and competitors, civil society organisations, national competent authorities and others deemed relevant by the Commission for the respective core platform services which are the subject of the request of the gatekeeper. The Commission may specify the measures that the gatekeeper concerned shall implement and shall adopt its decision within three months after it has received the request of the gatekeeper. A gatekeeper shall continue to comply with all***

relevant obligations during the proceedings pursuant to Article 18. (68, 614 615 616 617 618)

COMP H covering AMs 69 & 621- 628

*Article 8
Suspension*

1. The Commission may, on a reasoned request by the gatekeeper, exceptionally suspend, in whole or in part, a specific obligation laid down in Articles 5 and 6 for a core platform service by decision adopted in accordance with the advisory procedure referred to in Article 32(4), where the gatekeeper demonstrates that compliance with that specific obligation would endanger, due to exceptional circumstances beyond the control of the gatekeeper, the economic viability of the operation of the gatekeeper in the Union, and only to the extent necessary to address such threat to its viability. The Commission shall aim to adopt the suspension decision without delay and at the latest 3 months following receipt of a complete reasoned request. ***The suspension decision shall be accompanied by a reasoned statement detailing the grounds for the suspension.*** (625 626)
2. Where the suspension is granted pursuant to paragraph 1, the Commission shall review its suspension decision every year. Following such a review the Commission shall either lift the suspension or decide that the conditions of paragraph 1 continue to be met.
3. ***In cases of urgency, the*** Commission may, acting on a reasoned request by a gatekeeper, provisionally suspend the application of the relevant obligation to one or more individual core platform services already prior to the decision pursuant to paragraph 1. (69)

In assessing the request, the Commission shall take into account, in particular, the impact of the compliance with the specific obligation on the economic viability of the operation of the gatekeeper in the Union as well as on third parties. The suspension may be made subject to conditions and obligations to be defined by the Commission in order to ensure a fair balance between these interests and the objectives of this Regulation. Such a request may be made and granted at any time pending the assessment of the Commission pursuant to paragraph 1.

COMP I covering AMs 70& 629 - 634

*Article 9
Exemption for overriding reasons of public interest*

1. The Commission may, acting on a reasoned request by a gatekeeper or on its own initiative, by decision adopted in accordance with the advisory procedure referred to in Article 32(4), exempt it, in whole or in part, from a specific obligation laid down

in Articles 5 and 6 in relation to an individual core platform service identified pursuant to Article 3(7), where such exemption is justified on the grounds set out in paragraph 2 of this Article. The Commission shall adopt the exemption decision at the latest 3 months after receiving a complete reasoned request. ***The exemption decision shall be accompanied by a reasoned statement detailing the grounds for the exemption.*** (629)

1a. Where an exemption is granted pursuant to paragraph 1, the Commission shall review its exemption decision every 2 years. Following such a review, the Commission shall either wholly or partially lift the exemption or decide that the conditions of paragraph 1 continue to be met. (70)

2. An exemption pursuant to paragraph 1 may only be granted on grounds of:

- (a) public morality;
- (b) public health;
- (c) public security.

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

In assessing the request, the Commission shall take into account, in particular, the impact of the compliance with the specific obligation on the grounds in paragraph 2 as well as the effects on the gatekeeper concerned and on third parties. The suspension may be made subject to conditions and obligations to be defined by the Commission in order to ensure a fair balance between the goals pursued by the grounds in paragraph 2 and the objectives of this Regulation. Such a request may be made and granted at any time pending the assessment of the Commission pursuant to paragraph 1.

COMP J covering AMs 71 & 635-642 & 811-813

Article 10

Updating obligations for gatekeepers

1. The Commission is empowered to adopt delegated acts in accordance with Article 37 to ***supplement*** the obligations laid down in Articles 5 and 6 where, based on a market investigation pursuant to Article 17, it has identified the need for new obligations addressing practices that limit the contestability of core platform services or are unfair in the same way as the practices addressed by the obligations laid down in Articles 5 and 6.

1a. The delegated acts that supplement the obligations set out in Articles 5 and 6 in accordance with paragraph 1 shall be limited to:

- (a) extending any obligation that applies to a certain core platform service;**
- (b) specifying the manner in which the obligations of the gatekeepers under Articles 5 and 6 are to be implemented, including through incorporating the specifications set out in Article 7(2) into the obligations;**
- (c) extending any obligation that identifies a certain subset of users as beneficiaries to any other subset of users as beneficiaries;**
- (d) supplementing the obligations with a view to improving the effectiveness of their application. (71)**

2. A practice within the meaning of paragraph 1 shall be considered to be unfair or limit the contestability of core platform services where:

- (a) there is an imbalance of rights and obligations on business *users or end* users and the gatekeeper is obtaining an advantage from business users that is disproportionate to the service provided by the gatekeeper to business *users or end* users; or (639 640 641 642)**
- (b) the contestability of markets is weakened as a consequence of such a practice engaged in by gatekeepers.**

COMP K covering AMs 72 & 643-658

Article 11 Anti-circumvention

1. A gatekeeper shall ensure that the obligations of Articles 5 and 6 are fully and effectively complied with. While the obligations of Articles 5 and 6 apply in respect of core platform services designated pursuant to Article 3, their implementation shall not be undermined by any behaviour of the undertaking to which the gatekeeper belongs. ***Neither the gatekeeper nor the undertaking to which it belongs shall engage in any behaviour, regardless of whether this behaviour is of a contractual, commercial, technical or any other nature, including product or interface design, structure, function or manner of operation or behavioural techniques, capable of influencing user choice and autonomy or through agreements with third party business partners of the gatekeepers, which is able to have an equivalent object or effect to a behaviour prohibited pursuant to Articles 5 and 6.*** (645 646 647)
2. Where consent for collecting, **█** processing **and sharing** of personal data is required to ensure compliance with this Regulation, a gatekeeper shall take the necessary steps to either enable business users to directly obtain the required consent to their processing **and retrieval**, where required under Regulation (EU) 2016/679 and Directive 2002/58/EC, or, ***if such consent is not obtained***, to comply with Union data protection and privacy rules and principles in other ways including by providing business users with duly anonymised data **█**. The gatekeeper shall not make the obtaining of this consent by the business user more burdensome than for its own services, ***including through product design, structure, function or manner of operation capable of influencing user choice and autonomy or through agreements with third party business partners of the gatekeepers, and shall offer users a choice in a neutral way, safeguarding the autonomous decision-making of business users or end users via form, function or operation of the user interface.*** (648 649 650 652 653)

In the event that the business user or end user has been presented with the choice of giving consent to the combination of data for a specific processing purpose and has not provided consent, or has withdrawn consent, or the business user's or end user's terminal equipment signals his or her objection to the processing of personal data pursuant to Article 21(5) of Regulation (EU) 2016/679, the gatekeeper shall not prompt again a consent request and shall not exclude access to the services nor offer different or degraded services compared to the services offered to a business user or end user that provided consent.

3. A gatekeeper shall not degrade the conditions or quality of any of the core platform services provided to business users or end users who avail themselves of the rights or choices laid down in Articles 5 and 6, or ***obstruct or make discriminatory*** the exercise of those rights or choices ***or make such exercise*** unduly difficult, ***including through the use of manipulative choice architectures. The gatekeeper shall not subvert or impair consumers' autonomy, decision-making, or choice via the structure, function or manner of operation of their online interface or any part***

thereof while those consumers are exercising those rights or specific choices. (654 655 656)

- 3 a. *A gatekeeper shall not obstruct or dissuade end users from switching to other software applications and services nor directly or indirectly circumvent any of the obligations laid down in Articles 5 and 6, including through the use of manipulative choice architectures.* (657)

COMPL covering AMs 73-76 & 659-677

Article 12

Obligation to inform about concentrations

1. A gatekeeper shall inform the Commission of any intended concentration within the meaning of Article 3 of Regulation (EC) No 139/2004 ~~involving another provider of core platform services or of any other services provided in the digital sector~~ ■ irrespective of whether it is notifiable to a Union competition authority under Regulation (EC) No 139/2004 or to a competent national competition authority under national merger rules. (662 663)

A gatekeeper shall inform the Commission of such a concentration prior to its implementation and following the conclusion of the agreement, the announcement of the public bid, or the acquisition of a controlling interest.

2. The *information delivered* pursuant to paragraph 1 shall *explicitly explain that the intended concentration would not endanger the contestability of the relevant markets but promote competition and innovation and* at least describe for the acquisition targets their EEA and worldwide annual turnover, for any ■ services their respective EEA annual turnover, their number of yearly active business users and the number of monthly active end users, *the categories of personal data they process*, as well as the rationale of the intended concentration, *and its potential impact on the rights and interests of business users and end users.* (670 671 672)

In addition to the information specified in the first subparagraph, the gatekeeper shall provide to the Commission

(a) *a study undertaken by an independent ISO 17020 certified auditor to confirm the correctness of the provided documentation to substantiate that the intended concentration would not hamper competition and innovation;*
and

(b) *an opinion on the relevance of datasets for the intended concentration requested from the European Data Protection Board (EDPB).*

3. If, following any concentration as provided in paragraph 1, *it is demonstrated that* additional core platform services individually satisfy the thresholds in point (b) of Article 3(2), the gatekeeper concerned shall inform the Commission thereof within

three months from the implementation of the concentration and provide the Commission with the information referred to in Article 3(2).

- 3 a.** *The information gathered pursuant to this Article may be used in parallel competition cases, especially for purposes of merger control. (675)*
- 3 b.** *The Commission shall publish annually the list of acquisitions of which it has been informed by gatekeepers. (676)*

COMP M covering AMs 77 & 678-682

Article 13
Obligation of an audit

Within six months after its designation pursuant to Article 3, a gatekeeper shall submit to the Commission an independently audited description of any techniques for profiling of **business users and end users and the personalisation of their service and any other digital technology technique used to entice users to engage in certain actions or predict their actions** that the gatekeeper applies to or across its core platform services identified pursuant to Article 3, **and make that description publicly available**. This description shall be updated at least annually. (678 682)

An audit performed pursuant to paragraph 1 shall be performed by an organisation which:

(a) is independent from the gatekeeper concerned and has not provided any other service to the undertaking to which the gatekeeper belongs in the previous 12 months;

(b) has proven expertise in the area of risk management, technical competence and capabilities in the area of digital technologies;

(c) has proven objectivity and professional ethics, based in particular on adherence to codes of practice or appropriate standards;and

(d) has not provided such an audit to the same gatekeeper for more than 3 consecutive years. (678)

COMP ZZ covering AMs109 & 803-804, 814-818

Article 38
Review

1. By ***three years after the entry into force of this Regulation***, and subsequently every three years, the Commission shall evaluate this Regulation and report to the European Parliament, the Council and the European Economic and Social Committee. ***With respect to the obligations set out in Article 5 and 6, the Commission shall carry out an evaluation by twelve months after the entry into force of this Regulation, and subsequently every twelve months.*** (109 815)
2. The evaluations shall establish whether ***it is required to modify, add or remove*** rules, including regarding the list of core platform services laid down in point 2 of Article 2, the obligations laid down in Articles 5 and 6 and their enforcement, ***in order*** to ensure that digital markets across the Union are contestable and fair. Following the evaluations, the Commission shall take appropriate measures, which may include legislative proposals. (816)

- 2a. *The review referred to in the first sentence of paragraph 1 shall consider whether this Regulation should be added to the Annex to Directive (EU) 2020/1828.***
3. Member States shall provide any relevant information they have that the Commission may require for the purposes of drawing up the report referred to in paragraph 1.
- 3 a. *The Commission shall report on the implementation of this Regulation in its annual report on Competition Policy.*** (814 818)