

Art 18-29 - version dated 20.10.2021

COMP R (Arts 18&19) covering AMs 85 86 725 727

Article 18

Opening of proceedings

Where the Commission intends to carry out proceedings in view of the possible adoption of decisions pursuant to Article 7, 25 and 26, it shall adopt a decision opening a proceeding. ***That decision shall be publicly available.*** (725)

Article 19

Requests for information

1. The Commission may by simple request or by decision require information from undertakings and associations of undertakings to provide all necessary information, including for the purpose of monitoring, implementing and enforcing the rules laid down in this Regulation. The Commission may also request access to data bases, algorithms ***and A/B testing*** of undertakings and request explanations on those by a simple request or by a decision. ***Where the simple request is not fulfilled within a period of 3 weeks, the Commission may require this information by decision.*** (727)
2. The Commission may request information from undertakings and associations of undertakings pursuant to paragraph 1 also prior to opening a market investigation pursuant to Article 14 or proceedings pursuant to Article 18.
3. When sending a simple request for information to an undertaking or association of undertakings, the Commission shall state the purpose of the request, specify what information is required and fix the time-limit within which the information is to be provided, and the penalties provided for in Article 26 for supplying incomplete, incorrect or misleading information or explanations.
4. Where the Commission requires undertakings and associations of undertakings to supply information by decision, it shall state the purpose of the request, specify what information is required and fix the time-limit within which it is to be provided. Where the Commission requires undertakings to provide access to its data-bases and algorithms, it shall state the legal basis and the purpose of the request, and fix the time-limit within which it is to be provided. It shall also indicate the penalties provided for in Article 26 and indicate or impose the periodic penalty payments provided for in Article 27. It shall further indicate the right to have the decision reviewed by the Court of Justice.
5. The undertakings or associations of undertakings or their representatives shall supply the information requested on behalf of the undertaking or the association of undertakings concerned. Lawyers duly authorised to act may supply the information on behalf of their clients. The latter shall remain fully responsible if the information supplied is incomplete, incorrect or misleading.

6. At the request of the Commission, the governments and authorities of the Member States shall provide the Commission with all necessary information to carry out the duties assigned to it by this Regulation.

COMPS (Arts 20&21) covering AMs 87 & 728-731

Article 20

Power to carry out interviews and take statements

The Commission may interview any natural or legal person which consents to being interviewed for the purpose of collecting information, relating to the subject-matter of an investigation, including in relation to the monitoring, implementing and enforcing of the rules laid down in this Regulation.

Article 21

Powers to conduct on-site inspections

1. The Commission may conduct on-site inspections at the premises of an undertaking or association of undertakings ***for the purposes of investigations under Articles 14 to 17 of this Regulation.*** (729)
2. On-site inspections may also be carried out with the assistance of auditors or experts appointed by the Commission pursuant to Article 24(2).
3. During on-site inspections the Commission and auditors or experts appointed by it may require the undertaking or association of undertakings to provide access to and explanations on its organisation, functioning, IT system, algorithms, data-handling and business conducts. ***They may run behavioural experiments to evaluate the algorithm and use of the data.*** The Commission and auditors or experts appointed by it may address questions to key personnel. (730)
4. Undertakings or associations of undertakings are required to submit to an on-site inspection ordered by decision of the Commission. The decision shall specify the subject matter and purpose of the visit, set the date on which it is to begin and indicate the penalties provided for in Articles 26 and 27 and the right to have the decision reviewed by the Court of Justice.

COMP T covering AMs 88 726 732 739 745 802

Article 21 a

Reporting mechanism for business users and end users

1. ***Business users, competitors and end users of the core platform services may report to the Commission or national regulators any practice or behaviour by gatekeepers that falls within the scope of this Regulation, including non-compliance. The Commission and Member States shall inform each other of such reports.***

2. *The Commission shall set its priorities for the task of examining the reports referred to paragraph 1. Subject to the provisions of paragraph 5 of this Article and of Article 33, the Commission may choose not to examine a report on the grounds that it does not consider such a report to be an enforcement priority.*
3. *When the Commission considers that a report is an enforcement priority, it may open a proceeding pursuant to Article 18 or a market investigation pursuant to Article 14.*
4. *Without prejudice to Article 33, a Member State may request the Digital Markets Advisory Committee to adopt an opinion in order to determine if one or several reports should be considered an enforcement priority. The opinion may request the Commission to open a proceeding pursuant to Article 18 or a market investigation pursuant to Article 14. The Advisory Committee shall adopt an opinion within 1 month. In its opinion, it shall state the reasons why the report is considered to be, or not to be, an enforcement priority. If the report considers it to be an enforcement priority, the Commission shall, within four months, examine whether there are reasonable grounds for opening such a proceeding or investigation. Where the Commission does not comply with the request of the Advisory Committee, it shall state the reasons for not initiating a proceeding under Article 18 or a market investigation under Article 14. (88 726 732 739 745 802)*

COMP U covering AMs 89-91 733 734

Article 22

Interim measures

1. In case of urgency due to the risk of serious and **immediate** damage for business users or end users of gatekeepers, the Commission may, by decision adopt in accordance with the advisory procedure referred to in Article 32(4), order interim measures against a gatekeeper on the basis of a prima facie finding of an infringement of Articles 5 or 6. (89)
2. A decision pursuant to paragraph 1 may only be adopted in the context of proceedings opened in view of the possible adoption of a decision of non-compliance pursuant to Article 25(1). This decision shall apply for a specified period of time and may be renewed in so far this is necessary and appropriate.
- 2a. *In case of urgency, due to the risk of serious and immediate damage for business users or end users resulting from new practices implemented by one or several gatekeepers, that may undermine the contestability of core platform services or may be unfair pursuant to Article 10(2), the Commission may, by decision adopted in accordance with the advisory procedure referred to in Article 32(4), order interim measures against the gatekeepers concerned in order to avoid the materialisation of such risk. (90)*

- 2b. *A decision pursuant to paragraph 2a may only be adopted in the context of a market investigation pursuant to Article 17 and within 6 months of the opening of such an investigation. The interim measures shall apply for a specified period of time and, in any case, shall be replaced by new obligations that may arise as a result of the final decision of the market investigation pursuant to Article 17.* (91)

COMP V covering AMs 92 93 735-738

Article 23

Commitments

1. If during proceedings under Articles 16 or 25 the gatekeeper concerned offers commitments for the relevant core platform services to ensure compliance with the obligations laid down in Articles 5 and 6, the Commission may by decision adopted in accordance with the advisory procedure referred to in Article 32(4) make those commitments binding on that gatekeeper and declare that there are no further grounds for action. *The Commission shall, where appropriate, be entitled to require the commitments to be tested to optimise their effectiveness.* (92)
2. The Commission may, upon request *by one or more national competent authorities* or on its own initiative, reopen by decision the relevant proceedings, where: (736)
 - (a) there has been a material change in any of the facts on which the decision was based;
(a a) the measures proposed by the gatekeeper have proven ineffective to ensure compliance with the obligations of Article 5 and 6; (737)
 - (b) the gatekeeper concerned acts contrary to its commitments;
 - (c) the decision was based on incomplete, incorrect or misleading information provided by the parties.
3. Should the Commission consider that the commitments submitted by the gatekeeper concerned cannot ensure effective compliance with the obligations laid down in Articles 5 and 6, it shall explain the reasons for not making those commitments binding in the decision concluding the relevant proceedings *and, following an investigation pursuant to Article 16 or Article 17, require changes to the commitments in order to make them effective.* (93 738)

COMP W covering AMs 94 -97 & 739-743

Article 24

Monitoring of obligations and measures

1. The Commission *shall* take the necessary actions to monitor the effective implementation and compliance with the obligations laid down in Articles 5 and 6 and the decisions taken pursuant to Articles 7, 16, 22 and 23. (94 740)

- 1a. The Commission shall establish and maintain a publicly accessible and user-friendly website containing at least the following information:**
- (a) the number of non-compliance decisions adopted pursuant to Article 25;**
 - (b) the number of fines imposed pursuant to Article 26;**
 - (c) the names of the companies against which non-compliance decisions were taken;**
 - (d) the names of the companies on which fines were imposed. (741)**
- 2. The actions pursuant to paragraph 1 may include the appointment of independent external experts and auditors to assist the Commission to monitor the obligations and measures and to provide specific expertise or knowledge to the Commission. Those external experts and auditors shall have had no contractual relations during the 12 months preceding the appointment by the Commission with the undertaking providing the core platform services referred to in paragraph 1. (742)**
- 2a. To ensure direct involvement on a daily basis, the Commission shall appoint a compliance officer, to be funded by the relevant gatekeeper, to oversee the implementation and compliance of the obligations and measures. The officer shall carry out its tasks under the supervision of the Commission and shall follow any orders or instructions given by the Commission. (96)**
- 2b. The Commission is empowered to adopt a delegated act in accordance with Article 34 to supplement this Regulation by specifying the mandate which compliance officers shall fulfil and the obligations of gatekeepers to provide information to and to cooperate with compliance officers. (97)**

COMP X covering AMs 98 & 746-756

Article 25

Non-compliance

- 1. The Commission shall, within six months from opening a proceeding according to Article 18, adopt a non-compliance decision in accordance with the advisory procedure referred to in Article 32(4) where it finds that a gatekeeper does not comply with one or more of the following: (746 747 750)**
- (a) any of the obligations laid down in Articles 5 or 6;**
 - (b) measures specified in a decision adopted pursuant to Article 7(2);**
 - (c) measures ordered pursuant to Article 16(1);**
 - (d) interim measures ordered pursuant to Article 22; or**
 - (e) commitments made legally binding pursuant to Article 23.**

2. Before adopting the decision pursuant to paragraph 1, the Commission shall communicate its preliminary findings to the gatekeeper concerned. In the preliminary findings, the Commission shall explain the measures it considers to take or it considers that the gatekeeper should take in order to effectively address the preliminary findings. ***The Commission shall take into account the views of third parties affected by the conduct of the gatekeeper concerned before adopting a decision.*** (98)
3. In the non-compliance decision adopted pursuant to paragraph 1, the Commission shall order the gatekeeper to cease and desist with the non-compliance within an appropriate deadline, ***which shall not be longer than three months***, and to provide explanations on how it plans to comply with the decision. ***The Commission may by decision adopted in accordance with the advisory procedure referred to in Article 32(4) impose on such gatekeeper any behavioural remedies which are proportionate to the infringement committed and necessary to ensure compliance with this Regulation.*** (751 752 753 754)
4. The gatekeeper shall provide the Commission with the description of the measures it took to ensure compliance with the decision adopted pursuant to paragraph 1. ***If the Commission, following an investigation pursuant to Article 16 or Article 17, finds that the measures are not effective to ensure compliance by the gatekeeper with its obligations under Articles 5 and 6, the Commission shall be entitled to require changes to these measures.*** (755 756)
5. Where the Commission finds that the conditions of paragraph 1 are not met, it shall close the investigation by a decision.

COMP Y covering AMs 99-102 & 757-767

Article 26

Fines

1. In the decision pursuant to Article 25, the Commission may impose on a gatekeeper fines ***not less than 4% and*** not exceeding ***20%*** of its total ***worldwide*** turnover in the preceding financial year where it finds that the gatekeeper, intentionally or negligently, fails to comply with:
 - (a) any of the obligations pursuant to Articles 5 and 6;
 - (b) the measures specified by the Commission pursuant to a decision under Article 7(2);
 - (c) measures ordered pursuant to Article 16(1);
 - (d) a decision ordering interim measures pursuant to Article 22;
 - (e) a commitment made binding by a decision pursuant to Article 23.

(ea) fail to provide within a time-limit, which shall not be less than 3 months, information that is required for assessing an undertaking's designation as a gatekeeper pursuant to Article 3(2) or supply incorrect, or misleading information; (100)

2. The Commission may by decision impose on undertakings and associations of undertakings fines not exceeding 5% of the total *worldwide* turnover in the preceding financial year where they intentionally or negligently: (99)
 - (a) fail to ■ supply *complete* information ■ pursuant to Article 3(2);
 - (b) fail to notify information that is required pursuant to Article 12 or supply incorrect, incomplete or misleading information;
 - (c) fail to submit the description that is required pursuant to Article 13;
 - (d) supply incorrect, incomplete or misleading information or explanations that are requested pursuant to Articles 19 or Article 20;
 - (e) fail to provide access to data-bases and algorithms pursuant to Article 19;
 - (f) fail to rectify within a time-limit set by the Commission, incorrect, incomplete or misleading information given by a member of staff, or fail or refuse to provide complete information on facts relating to the subject-matter and purpose of an inspection pursuant to Article 21;
 - (g) refuse to submit to an on-site inspection pursuant to Article 21.
3. In fixing the amount of the fine, regard shall be had to the gravity, duration, recurrence, and, for fines imposed pursuant to paragraph 2, delay caused to the proceedings.
4. When a fine is imposed on an association of undertakings taking account of the turnover of its members and the association is not solvent, the association shall be obliged to call for contributions from its members to cover the amount of the fine.

Where such contributions have not been made to the association within a time-limit set by the Commission, the Commission may require payment of the fine directly by any of the undertakings whose representatives were members of the decision-making bodies concerned of the association.

After having required payment in accordance with the second subparagraph, the Commission may require payment of the balance by any of the members of the association which were active on the market on which the infringement occurred, where necessary to ensure full payment of the fine.

However, the Commission shall not require payment pursuant to the second or the third subparagraph from undertakings which show that they have not implemented the infringing decision of the association and either were not aware of its existence or have actively distanced themselves from it before the Commission started investigating the case.

The financial liability of each undertaking in respect of the payment of the fine shall not exceed 10 % of its total *worldwide* turnover in the preceding financial year.
(102)

COMP Z (Arts 27-29) covering AMs 768-774

Article 27

Periodic penalty payments

1. The Commission may by decision impose on undertakings, including gatekeepers where applicable, periodic penalty payments not exceeding 5 % of the average daily turnover in the preceding financial year per day, calculated from the date set by that decision, in order to compel them:
 - (a) to comply with the decision pursuant to Article 16(1);
 - (b) to supply correct and complete information within the time limit required by a request for information made by decision pursuant to Article 19;
 - (c) to ensure access to data-bases and algorithms of undertakings and to supply explanations on those as required by a decision pursuant to Article 19;
 - (d) to submit to an on-site inspection which was ordered by a decision taken pursuant to Article 21;
 - (e) to comply with a decision ordering interim measures taken pursuant to Article 22(1);
 - (f) to comply with commitments made legally binding by a decision pursuant to Article 23(1);
 - (g) to comply with a decision pursuant to Article 25(1).
2. Where the undertakings have satisfied the obligation which the periodic penalty payment was intended to enforce, the Commission may by decision adopted in accordance with the advisory procedure referred to in Article 32(4) set the definitive amount of the periodic penalty payment at a figure lower than that which would arise under the original decision.

Article 28

Limitation periods for the imposition of penalties

1. The powers conferred on the Commission by Articles 26 and 27 shall be subject to a **five** year limitation period. (769 770 771 772)
2. Time shall begin to run on the day on which the infringement is committed. However, in the case of continuing or repeated infringements, time shall begin to run on the day on which the infringement ceases.

3. Any action taken by the Commission for the purpose of an investigation or proceedings in respect of an infringement shall interrupt the limitation period for the imposition of fines or periodic penalty payments. The limitation period shall be interrupted with effect from the date on which the action is notified to at least one undertaking or association of undertakings which has participated in the infringement. Actions which interrupt the running of the period shall include in particular the following:
 - (a) requests for information by the Commission;
 - (b) on-site inspection;
 - (c) the opening of a proceeding by the Commission pursuant to Article 18.
4. Each interruption shall start time running afresh. However, the limitation period shall expire at the latest on the day on which a period equal to twice the limitation period has elapsed without the Commission having imposed a fine or a periodic penalty payment. That period shall be extended by the time during which limitation is suspended pursuant to paragraph 5.
5. The limitation period for the imposition of fines or periodic penalty payments shall be suspended for as long as the decision of the Commission is the subject of proceedings pending before the Court of Justice of the European Union.

Article 29

Limitation periods for the enforcement of penalties

1. The power of the Commission to enforce decisions taken pursuant to Articles 26 and 27 shall be subject to a limitation period of *seven* years. (773 774)
2. Time shall begin to run on the day on which the decision becomes final.
3. The limitation period for the enforcement of penalties shall be interrupted:
 - (a) by notification of a decision varying the original amount of the fine or periodic penalty payment or refusing an application for variation;
 - (b) by any action of the Commission or of a Member State, acting at the request of the Commission, designed to enforce payment of the fine or periodic penalty payment.
4. Each interruption shall start time running afresh.
5. The limitation period for the enforcement of penalties shall be suspended for so long as:
 - (a) time to pay is allowed;
 - (b) enforcement of payment is suspended pursuant to a decision of the Court of Justice.