

Art 30-33a - version dated 20.10.2021

**COMP AA (Arts 30-33a) covering AMs 103-108 744 & 775-801 808 809**

*Article 30*

*Right to be heard and access to the file*

1. Before adopting a decision pursuant to Article 7, Article 8(1), Article 9(1), Articles 15, 16, 22, 23, 25 and 26 and Article 27(2), the Commission shall give the gatekeeper or undertaking or association of undertakings concerned, **including third parties affected by the conduct of the gatekeeper concerned**, the opportunity of being heard on: (103 775 776 777)
  - (a) preliminary findings of the Commission, including any matter to which the Commission has taken objections;
  - (b) measures that the Commission may intend to take in view of the preliminary findings pursuant to point (a) of this paragraph.
2. Gatekeepers, undertakings and associations of undertakings concerned, **including third parties affected by the conduct of the gatekeeper concerned**, may submit their observations to the Commission's preliminary findings within a time limit which shall be fixed by the Commission in its preliminary findings and which may not be less than 14 days. (778 779)
3. The Commission shall base its decisions only on objections on which gatekeepers, undertakings and associations of undertakings concerned, **including third parties affected by the conduct of the gatekeeper concerned**, have been able to comment. (780)
4. The rights of defence of the gatekeeper or undertaking or association of undertakings concerned shall be fully respected in any proceedings. The gatekeeper or undertaking or association of undertakings concerned shall be entitled to have access to the Commission's file under the terms of a negotiated disclosure, subject to the legitimate interest of undertakings in the protection of their business secrets. The right of access to the file shall not extend to confidential information and internal documents of the Commission or the authorities of the Member States. In particular, the right of access shall not extend to correspondence between the Commission and the authorities of the Member States. Nothing in this paragraph shall prevent the Commission from disclosing and using information necessary to prove an infringement.

*Article 31*

*Professional secrecy*

1. The information collected pursuant to Articles 3, 19, 20 and 21 shall be used only for the purposes of this Regulation. (783)
2. Without prejudice to the exchange and to the use of information provided for the purpose of use pursuant to Articles 12, 13, 32 and 33, the Commission, the

authorities of the Member States, their officials, servants and other persons working under the supervision of these authorities and any natural or legal person, including auditors and experts appointed pursuant to Article 24(2), shall not disclose information acquired or exchanged by them pursuant to this Regulation and of the kind covered by the obligation of professional secrecy. This obligation shall also apply to all representatives and experts of Member States participating in any of the activities of the Digital Markets Advisory Committee pursuant to Article 32. (784)

### *Article 31a*

#### *Cooperation and coordination with Member States*

- 1. In accordance with the principles laid down in Article 1 and subject to Article 32a, the Commission shall be the sole decision-maker with regard to the correct application of this Regulation. To ensure effective enforceability and coherent implementation, the Commission shall be supported in every possible way by the expertise of the competent national authorities.*
- 2. The Commission and Member States shall work in close cooperation to ensure coherent, effective and complementary enforcement of available legal instruments applied to gatekeepers within the meaning of this Regulation.*
- 3. National authorities shall not take decisions which are inconsistent with any decision adopted by the Commission under this Regulation.*
- 4. The Commission and the competent authorities of the Member States enforcing the rules referred to in Article 1(6) shall have the power to provide one another with information regarding any matter of fact or of law, including confidential information.*
- 5. Information exchanged pursuant to paragraph 3 of this Article shall only be exchanged and used for the purpose of coordination of the enforcement of this Regulation and the rules referred to in Article 1(6).*
- 6. National competent authorities may report to the Commission any practice or behaviour by gatekeepers that falls within the scope of this Regulation. The Commission and Member States shall inform each other of such reports.*
- 7. The competent authorities of the Member States enforcing the rules referred to in Article 1(6) may consult the Commission on any matter relating to the application of this Regulation. (105 787)*

*Article 32*  
*Digital Markets Advisory Committee*

1. The Commission shall be assisted by the Digital Markets Advisory Committee. That Committee shall be a Committee within the meaning of Regulation (EU) No 182/2011. ***The Digital Markets Advisory Committee may establish one or more technical expert groups that can be consulted on an ad hoc basis and that will include relevant national authorities and regulators including representatives of the competent authorities of the Member States for competition, electronic communications, audio-visual services, electoral oversight, and consumer protection, representatives of the European Data Protection Board established in accordance with Article 68 of Regulation (EU) 2016/679 of the European Parliament and the Council.*** (106 786)
2. Where the opinion of the committee is to be obtained by written procedure, that procedure shall be terminated without result when, within the time-limit for delivery of the opinion, the chair of the committee so decides or a simple majority of committee members so request.
3. The Commission shall communicate the opinion of the Digital Markets Advisory Committee to the addressee of an individual decision, together with that decision. It shall make the opinion public together with the individual decision, having regard to the legitimate interest in the protection of professional secrecy.
4. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.

*Article 32a*

***Cooperation with national competition authorities***

1. ***The Commission shall apply the provisions of this Regulation in close cooperation with national competition authorities, acting within the European Competition Network as defined in point (5) of Article 2 of Directive (EU)2019/1 of the European Parliament and of the Council, in accordance with the provisions of this Article. It shall, in particular and as appropriate, make use of the European Competition Network System referred to in Article 33 of that Directive for the exchange of information, in particular as regards concentrations as referred to in Article 12, decisions relating to the opening of a market investigation pursuant to Article 14 or proceedings pursuant to Article 18.***
2. ***At the request of the Commission, national competition authorities shall cooperate in the application of Articles 12, 15, 16 and 17.***
3. ***Where requested by the Commission to assist in any investigation pursuant to paragraph 2 of this Article, the competition authorities of the Member States shall have the power to apply, mutatis mutandis, the powers of the Commission set out in Articles 19, 20 and 21.***

4. *The competition authorities of the Member States shall have the power to exercise the powers conferred on the Commission by Article 24.*
5. *When requesting a competition authority to cooperate in accordance with paragraph 2, the Commission shall transmit, to that competition authority, copies of the most important documents it has collected with a view to applying Articles 15, 16 and 17. At the request of the competition authority of a Member State, the Commission shall provide it with a copy of other existing documents necessary for the assessment of the case. When deciding on whether to request a competition authority to cooperate, the Commission may take into account the importance of the national market for the respective gatekeeper.*
6. *When acting in accordance with paragraph 3, the competition authorities of the Member States shall inform the Commission in writing before and without delay after commencing the first formal investigative measure. This information may also be made available to the competition authorities of the other Member States.*
7. *The acting competition authority shall make available to the Commission any information it receives in the exercise of powers as set out in paragraph 3. The information supplied to the Commission may be made available to the competition authorities of the other Member States. National competition authorities may also exchange information necessary for the assessment of a case that they are dealing with under this Regulation.*
8. *The competition authorities of the Member States may consult the Commission on any case involving the application of Union law. (107, 785)*

### *Article 33*

#### *Request for a market investigation and non-compliance proceedings (789)*

1. When **competent authorities in one** Member State~~s~~ request the Commission to open an investigation pursuant to
  - (a) open an investigation pursuant to Article 15 because they consider that there are reasonable grounds to suspect that a provider of core platform services should be designated as a gatekeeper;
  - (b) *open an investigation pursuant to Article 16 because they consider that there are reasonable grounds to suspect that a gatekeeper has been in a position of systemic non-compliance with Articles 5 and 6;*
  - (c) *open an investigation pursuant to Article 17 because they consider that one or more services should be added to the list of core platform services as defined in Article 2 (2) of this Regulation; or*
  - (d) *carry out proceedings in view of the possible adoption of a decision pursuant to Article 25 because they consider that a gatekeeper is not complying with its obligations,*

the Commission shall within four months examine **and decide** whether there are reasonable grounds to open such an investigation **or carry out such proceedings**. **The Commission shall add to this decision a detailed argumentation of its choice**

*of action. The decision shall be publicly available and communicated to all National Competent Authorities.* (108, 790 791 792 793 795 796)

2. Member States shall submit evidence in support of their request.