

RocaJunyent Informs

Department of Data Protection, Cybersecurity and Technology and
Department of Competition and European Union Law
21 January 2024



In the coming months, digital markets will undergo a tremendously important regulatory change, as several companies identified as particularly dominant in these markets will be obliged to comply with the important obligations imposed on them, as of 6 March 2024, by the **Digital Markets Regulation (EU) 2022/1925** (better known as the "*Digital Markets Act*", or "*DMA*" for short).

Specifically, six companies have been designated, to date, as *gatekeepers* by the European Commission¹ : **Alphabet, Amazon, Apple, ByteDance, Meta and**

¹ See [here](#) the European Commission's press release of 6.9.2023, designating the above-mentioned gatekeepers.

Microsoft, owners of digital platforms such as Google, Youtube, Facebook, Instagram, App Store, IOS, Android, Whatsapp, Messenger or TikTok, among others.

These companies have a few weeks to adjust as necessary, if necessary, to ensure compliance with the new obligations imposed by the WFD as of March this year, with a view to ensuring a proper and balanced functioning of the market in the main digital sectors, and in particular in the digital platforms which, due to their importance and influence, are essential for millions of businesses, consumers and users in the European Union.

Some of these obligations imposed by the European Commission on *gatekeepers* are as follows:

- They shall apply fair, reasonable and non-discriminatory conditions for access to their software application shops, search engines, online shops and social networking services.
- They should refrain from including parity clauses² to the detriment of professional users³.
- They shall refrain from preventing professional users from promoting offers to end-users⁴ and concluding contracts with them through any other distribution channel or platform.
- They should refrain from treating the *gatekeeper's* own services and products more favourably than similar third-party products (in terms of ranking, indexing or crawling, for example).
- They will have to allow companies to access the data and information generated by their services on *gatekeepers'* platforms,
- They shall refrain from using data that is not publicly generated or provided by professional users in the context of the use of the platform services, etc.
- They shall effectively allow and enable the installation and effective use of third-party software applications or application shops that use or interoperate with their operating systems.
- They shall refrain from requiring end-users to use ancillary services such as identification services, technical services, browser engines or web payment services of the *gatekeeper* that enable the provision of payment services. In the case of professional users, the *gatekeeper* shall not require them to use, offer or interoperate with such services.
- They shall ensure price transparency in advertising intermediation vis-à-vis advertisers and publishers.

² Parity or 'most favoured customer' clauses are clauses that prevent a supplier from offering its products or services through other distribution platforms at lower prices or on more attractive terms than those agreed with the platform with which the parity is agreed.

³ Professional users are to be understood according to the definition of Art. 2.21 WFD: "Any natural or legal person who, in a commercial or professional capacity, uses basic platform services to supply products or provide services to end-users or uses such services in the context of the supply of products or the provision of services to end-users".

⁴ End-user is to be understood as "any natural or legal person who uses basic platform services and who does not do so as a professional user" (Art.2.20 WFD).

- You may not require users to subscribe to or register for any basic platform services as a condition of using, accessing, registering for or enrolling in any of the *gatekeeper's* basic platform services.
- They shall refrain from introducing disproportionate or unenforceable conditions for termination of their service contracts.
- They will also not be able to prevent users from uninstalling any software or applications that have been pre-installed by the *gatekeeper*, etc.

From the point of view of data protection law, in addition to general compliance, gatekeepers:

- a) They shall guarantee to data subjects, free of charge, the right to data portability between platforms and the right to continuous and real-time access to such data, as provided for in the General Data Protection Regulation⁵.
- b) Unless the user has given his consent, they shall refrain from:
 - i. use personal data collected through third party services that rely on their platforms for online advertising purposes;
 - ii. combine personal data obtained from their services or platforms with information from other services they offer, or with data from external services, for the purpose of creating advertising profiles;
 - iii. cross-referencing personal data between different services they provide, including a prohibition on using data from one platform or service to benefit another of their services, and vice versa;
 - iv. where the end-user has refused or withdrawn the consent given, the *gatekeeper* shall not request consent for the same purpose more than once within a period of one year.
- c) They shall, upon request, provide third-party online search engine providers with access to data on rankings, queries, clicks and views, while anonymising any personal data they may contain.

From 6 March 2024, in the event of any breach of the obligations imposed on *gatekeepers* by the WFD, any user - professional or otherwise - or competitor of the above platforms may bring to the attention of the competent authorities any practice or behaviour that may contravene the WFD.

The European Commission will be in charge of supervising compliance with these obligations, with the support of the National Commission for Markets and Competition

⁵ Art.20 and Art.15 of [Regulation \(EU\) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC](#).

and the Spanish Data Protection Agency in Spain. In cases of non-compliance, *gatekeepers* face possible penalties of up to 10% of their total worldwide turnover - which can increase to 20% in case of repeat offences - and possible additional corrective measures if the infringement becomes systematic.