



ARTICLE 19 recommendations for the Digital Markets Act Trilogue

Since the publication of the proposal for a Digital Markets Act (DMA), ARTICLE 19 has welcomed the European Commission's aim to improve the way digital markets work. We have also highlighted that [users' human rights should be at the centre of plans](#) to regulate the role platform gatekeepers play in the future of Europe's digital environment.

The DMA is the first step towards finding solutions to tackle specific characteristics and harmful conduct in digital markets which led to a handful of companies controlling key services in the digital economy. At the same time, we find that the European Commission's proposal left a wide margin for [improvement in a number of areas](#).

As the discussions about the DMA have reached the final stage, we call on the European Parliament and the Member States in the EU Council to produce a holistic and forward-looking regulatory framework that adequately protects end-users and business users' rights alike while guaranteeing contestability and fairness on digital markets.

Therefore, ARTICLE 19 recommends in particular:

1. To strengthen the focus on end-users' rights and interests

We believe that the DMA can achieve its contestability and fairness goals only if it adequately considers and protects end-users and business-users' rights alike.

Various practices by gatekeepers exploit end-users excessively. These practices not only harm end-users' economic interests as consumers and customers, but they also have a negative impact on users' civic rights. In particular, individual gatekeepers can dictate a quality standard in the market that affects, among other things, the protection of users' data, their freedom of expression and their right not to be discriminated against. To protect end-users from various kinds of exploitative conduct by companies in strong market positions is traditionally one of the main goals of competition and pro-competitive measures. Unfortunately, the Commission has since concentrated excessively on the economic aspects of relationships between competitors. This is a failure that urgently needs fixed.

For these reasons, we support:

"Article 1(1) EP

1. The purpose of this Regulation is to contribute to the proper functioning of the internal market by laying down harmonised rules ensuring contestable and fair markets for all businesses to the benefit of both business users and end-users in the digital sector across the Union where gatekeepers are present so as to foster innovation and increase consumer welfare."

"Article 1(2) EP

This Regulation shall apply to core platform services provided or offered by gatekeepers to end-users established or located in the Union and business users, irrespective of the place of establishment or residence of the gatekeepers or business users and irrespective of the law otherwise applicable to the provision of service. This Regulation shall apply and be interpreted in full respect of fundamental rights and the principles recognised

by the Charter of Fundamental Rights of the European Union, in particular Articles 11, 16, 47 and 50 thereof.”

“Article 3(1)(b) EP

(b) it operates a core platform service which serves as an important gateway for business users and end-users to reach other end-users; and”

“Article 10(2)(a) EP

(a) there is an imbalance of rights and obligations on business 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”

2. To include end-users and their representatives in the enforcement process

As the DMA will have a strong impact on end-users’ rights, on the digital public sphere, and finally on our democracy, it is important that end-users and civil society organisations are provided adequate space and meaningful channels to contribute to the debate and the implementation of the regulatory framework. Moreover, providing them with proper mechanisms to participate will give greater legitimacy to the new regulatory regime, and it will enrich the regulators’ evidence base and improve the quality of their analysis. On the contrary, if the dialogue on compliance only considers the view of the gatekeepers the chances to achieve the goals of the framework are likely to be significantly reduced: indeed, gatekeepers have no incentives in changing the status quo.

For these reasons, we support:

“Recital 77c EP

(77c) End users should be entitled to enforce their rights in relation to the obligations imposed on gatekeepers under this Regulation through representative actions in accordance with Directive (EU) 2020/1828”

“Article 5(1)(d) EP

(d) refrain from directly or indirectly preventing or restricting business users or end users from raising issues with any relevant public authority, including national courts, relating to any practice of gatekeepers;”

“Article 24a EP

1. Business users, competitors, end-users of the core platform services as well as their representatives or other person with a legitimate interest may complain to the competent national authorities about any practice or behaviour by gatekeepers that falls into the scope of this Regulation, including non-compliance. The competent national authorities shall assess such complaints and shall report them to the Commission. The Commission shall examine whether there are reasonable grounds to open proceedings pursuant to Article 18 or a market investigation pursuant to Article 14.”

“Article 30(1) EP

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 with a legitimate interest, the opportunity of being heard on:”

“Article 30(2) EP

Gatekeepers, undertakings and associations of undertakings concerned including third parties with a legitimate interest 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.”

“Article 30(3) EP

The Commission shall base its decisions only on objections on which gatekeepers, undertakings, associations of undertakings concerned and third parties with a legitimate interest have been able to comment.”

3. To strengthen interoperability provision

Interoperability is an efficient way to achieve contestability and choice for end-users on markets that are subject to high barriers to entry and lock-in. Mandatory interoperability gatekeepers bear the potential to open markets or facilitate the creation of completely new ones and to incentivise innovation. In addition, it empowers end-users to provide more alternatives with regards to services as essential as, for example, their communication channels. Finally, it dilutes the enormous power that a few gatekeepers have on end-users, as it diminishes the possibility that the latter remains locked in.

For these reasons, we support:

“Article 6(1)(f) EP

(f) allow business users, providers of services and providers of hardware free of charge access to and interoperability with the same hardware and software features accessed or controlled via an operating system, provided that the operating system is identified pursuant to Article 3(7), that are available to services or hardware provided by the gatekeeper. Providers of ancillary services shall further be allowed access to and interoperability with the same operating system, hardware or software features, regardless of whether those software features are part of an operating system, that are available to ancillary services provided by a gatekeeper. The gatekeeper shall not be prevented from taking indispensable measures to ensure that interoperability does not compromise the integrity of the operating system, hardware or software features provided by the gatekeeper or undermine end-user data protection or cyber security provided that such indispensable measures are duly justified by the gatekeeper.”

“Article 6(1) f a (new) EP

(fa) allow any providers of number independent interpersonal communication services upon their request and free of charge to interconnect with the gatekeepers number independent interpersonal communication services identified pursuant to Article 3(7). Interconnection shall be provided under objectively the same conditions and quality that are available or used by the gatekeeper, its subsidiaries or its partners, thus allowing for a functional interaction with these services, while guaranteeing a high level of security and personal data protection;”

“Article 24(1b) EP

1b. The gatekeeper shall not engage in any behaviour discouraging interoperability by using technical protection measures, discriminatory terms of service, subjecting application programming interfaces to copyright or providing misleading information.”

4. To enhance the transparency in profiling

Requiring internal audits about how automated systems (especially automated decision-making systems), are used by companies, including about how they work and which criteria are used to set them, is a basic and necessary step towards greater accountability. Transparency can help rebalance the asymmetry of information among gatekeepers, other players and end-users. However, we find that the scope of the audit mandated in Article 13 of the DMA proposal is too narrow and leaves too much room for manoeuvre to the gatekeepers.

For this reason, we support:

“Article 13(1) EP

Within six months after its designation pursuant to Article 3, a gatekeeper shall submit to the Commission and the High Level Group of Digital Regulators an independently audited

description of any techniques for profiling of consumers that the gatekeeper applies to or across its core platform services identified pursuant to Article 3. This description shall be updated at least annually. The Commission shall develop, in consultation with the EU Data Protection Supervisor, the European Data Protection Board, civil society and experts, the standards and procedure of the audit.”

5. To strengthen end-users’ freedom to choose their services

A common instrument that gatekeepers have to shield themselves from inter and intra-platform competition is to bundle services and offer them as a single package to end-users. The DMA contains provisions that tackle bundling, among others by imposing interoperability requirements, but they fail to go as far as needed. For example, we believe that end-users should not be required to subscribe to or register with any other core platform services as a condition for being able to use, access, sign up for or register with any other of their core platform services. In addition, we recommend that when using any pre-installed core platform service on an operating system, end-users are prompted to change the default settings for that core platform service to another option from among a list of the main third-party services available. End-users should be also allowed and be technically enabled to uninstall pre-installed software applications on a core platform.

For these reasons, we support:

“Article 5(1f) EP:

(f) not require business users or end users to subscribe to or register with any other core platform services as a condition for being able to use, access, sign up for or registering with any of their core platform services identified pursuant to that Article;”

“Article 5(1gb) EP:

(gb) from the moment of end users’ first use of any pre-installed core platform service on an operating system, prompt end-users to change the default settings for that core platform service to another option from among a list of the main third-party services available, and allow and technically enable end users to uninstall pre-installed software applications on a core platform service at any stage without prejudice to the possibility for a gatekeeper to restrict such uninstallation in relation to software applications that are essential for the functioning of the operating system or of the device and which cannot technically be offered on a standalone basis by third-parties;”