

## The Consumer Voice in Europe

Ref.: BEUC-X-2023-092/ARE/VTU/cs

5 July 2023

### **Subject: Comments on Template for Compliance Reports required by Article 11 of Regulation (EU) 2022/1925.**

Dear European Commission DMA Team,

BEUC welcomes the opportunity to comment on the draft Template for Compliance Reports required by Article 11 of Regulation (EU) 2022/1925 ("DMA").

The contents of compliance reports and their accessibility to other interested parties will be a very important tools for ensuring effective compliance by gatekeepers with their obligations under the DMA. We therefore welcome the comprehensiveness of the Template. In enforcing the DMA, it will be essential for the Commission to understand both how and why the gatekeepers have achieved compliance with their obligations.

In addition to the comprehensiveness of the Template, we welcome the following aspects of the Template in particular:

- That it is clear that this Template covers only the minimum information that is required from gatekeepers, that the Template can be updated, and that the Commission can require additional information, including specific testing, or indicators and measures to verify whether a gatekeeper has demonstrated effective compliance with a specific obligation laid down in Articles 5 to 7 DMA.
- That gatekeepers must indicate which individuals have been involved in the drafting of the compliance report to enable the use of Article 22 DMA interviews where appropriate.

Some points in the Template could be clarified:

- Section 2.1.2 c) (which should be 2.1.3) could include a reference to devices as well as to products and services to ensure completeness.
- Section 2.1.2 f) refers to:
  - "consent forms". It should be clear that this applies to all types of consent required under the DMA, regardless of whether this is via a "form" or in some other format.
  - The reference to "customer journey" should make clear that gatekeepers must provide a click-by-click description of the end user's interaction with the user interface.
- Section 2.1.6 could clarify further what falls within the concept of "feedback". It must furthermore be ensured that any personal information provided under this section is treated in line with the GDPR.
- The wording of Section 3.1.4 suggests that the compliance function might not need to be independent from the operational functions of the gatekeeper and not need to have sufficient authority, stature and resources, as well as access to the management body.

However, Article 28 requires this. Gatekeepers should therefore be required to demonstrate through information in relation to this section how (not whether) they comply with Article 28 DMA.

The following should be added:

- Section 2.1.2 i) should also require gatekeepers to specify end user and business user input that has not been taken into account, together with an explanation of why not.
- Section 2.1.2 o) should ensure that the full methodology for any consumer surveys is included in the compliance reports.
- Section 2.1.2 could make clear – beyond what is already covered by Section 2.1.2 r) that the Commission can require all raw data underlying the gatekeeper's responses to these questions in order to carry out its own testing/replicate how gatekeepers draw their conclusions. Alternatively, this data could be annexed to the compliance reports.
- Compliance reports should also include explanations on the measures taken to ensure compliance with all legislation referenced in Recital 12 and Article 8(1) DMA, including consumer protection law, the GDPR (including for consent forms and any other consents), legislation on cyber security, product safety, as well as accessibility requirements.

As regards the non-confidential summaries in Section 4:

- The level of detail provided in the non-confidential summaries will be critical to enable third parties to provide meaningful input to the Commission on gatekeepers' compliance with their DMA obligations. It will be particularly important for the non-confidential summaries to contain sufficient details in relation to Section 2 of the Template on the measures taken by gatekeepers. Our experience in competition cases has shown that companies can be prone to inappropriate and unjustified confidentiality claims. These can lead to both delay in the ability of third parties to comment and undermine the value of their comments. This must be prevented in relation to compliance reports. The Commission could consider how best to achieve this. Similar processes could be envisaged to those set out in Article 7(4)-(6) DMA Implementing Regulation.
- The Commission should consider whether gatekeepers and third parties, including civil society organisations, could agree to a disclosure process in the case of confidentiality disputes, potentially based on the procedures of Article 8 DMA Implementing Regulation
- A named individual could be added for the declaration of compliance in Sections 2.2.1 and 5.

Yours sincerely,

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