

Fact Sheet on Data Protection Aspects of the EU Digital Markets Act*

The EU's Digital Markets Act (DMA) imposes new data-related obligations on tech giants ("gatekeepers"). This fact sheet describes the key requirements that have an intersection with the General Data Protection Regulation (GDPR).

The DMA was formally adopted in July 2022, and the final text is expected to be published in the EU Official Journal in the fall. Gatekeepers will need to fully comply with the DMA by end of 2023/early 2024. The DMA will cover tech giants such as Google, Apple, Meta, Amazon, and Microsoft, as well as around 15-20 other online platforms, and it will entail significant spillover effects for those contracting with such organizations.



Gatekeepers

The DMA applies to "**core platform services**" (including online marketplaces, online platforms, social networking, cloud services, advertising services, video sharing, etc.) provided by companies that have been designated as "gatekeepers" by the European Commission (EC).

A company may be designated as a gatekeeper if it:

1. has an average market value of at least **€75 billion**, or an annual EU turnover of at least **€7.5 billion** in each of the past three years, and provides the same core platform service in at least three EU countries; and
2. has, on average, at least **45 million** active monthly end-users in the EU and at least **10,000** yearly business users in the EU, in the previous three years.



! Even if a company does not reach the above criteria, the EC can decide to designate the company as a gatekeeper following a market study which shows that the company is in a strong intermediary position with a significant impact on the EU market.



Notification to the EC

Companies will need to self-verify that they meet the criteria for a gatekeeper qualification. If so, they need to notify the EC.



Consent

Gatekeepers will need to obtain end-users' consent in order to:

- **combine or cross-use** personal data from a core platform service with personal data from other services offered by the same gatekeeper (e.g., by matching data sets that are tied to the same identifier);
- combine personal data from a core platform service with **third-party data** (e.g., data collected from third-party websites via cookies or a software development kit);
- **process** third-party data for **advertising purposes**; or
- **sign in** end-users to multiple services offered by the gatekeeper in order to combine personal data.



Such consent will need to comply with the **GDPR standard** for valid consent.

Access to Platform Usage Data

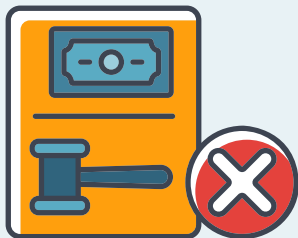
Gatekeepers will need to provide their business customers with data that is provided for or generated from the use of the gatekeeper's core platform services (e.g., information about end-users' interaction with the customer's page on the gatekeeper's platform). The data will need to be provided in a continuous, high-quality, and real-time manner.



However, where such usage data contains personal data, gatekeepers will need to obtain **end-users' consent** before sharing the data with the customer.

Data Portability

The DMA strengthens the GDPR's right to "data portability." Gatekeepers should provide "effective portability" of the data provided by the user or that users generate when using gatekeepers' services, including through **continuous and real-time access** to the data.



Enforcement and Fines

The DMA will be enforced by the EC (specifically, by DG Competition and DG Connect). Fines for infringements could reach up to **10 percent** of the company's total worldwide annual turnover. In case of repeated infringements, fines could climb higher, up to **20 percent** annual turnover worldwide. Where there is continuous non-compliance (at least three infringements in eight years) the EC will also be empowered to order conduct or structural remedies, such as the breakup of companies or forced divestments.

If you have any questions regarding privacy and the DMA, please contact [Cédric Burton](#) or [Laura De Boel](#) from Wilson Sonsini's [privacy and cybersecurity practice](#). [Roberto Yunquera Sehvani](#) and [Hattie Watson](#) contributed to the preparation of this fact sheet.

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