



EUROPEAN COMMISSION

CASE DMA.100055
Meta – Article 5(2)

(Only the English text is authentic)

Digital Markets Act
**Regulation (EU) 2022/1925 of the European Parliament
and of the Council**

Article 20(1) Regulation (EU) 2022/1925

Date: 25/03/2024

This text is made available for information purposes only.

Parts of this text have been edited to ensure that confidential information is not disclosed. Those parts are replaced by a non-confidential summary in square brackets or are shown as [...].



EUROPEAN COMMISSION

Brussels, 25.3.2024
C(2024) 2052 final

PUBLIC VERSION

Meta Platforms, Inc.
1601 Willow Road,
Menlo Park, CA 94025
USA

Subject: Case DMA.100055 – Meta – Article 5(2)

Commission decision opening proceedings pursuant to Article 20(1) of Regulation (EU) 2022/1925 of the European Parliament and of the Council on contestable and fair markets in the digital sector ¹
Only the English text is authentic

Dear Sir or Madam,

- (1) On 5 September 2023, the Commission adopted a decision designating Meta Platform Inc. together with all legal entities directly or indirectly controlled by Meta Platforms, Inc. (hereinafter referred to as “Meta”) as a gatekeeper pursuant to Article 3 of Regulation (EU) 2022/1925² (the “Designation Decision”). The Designation Decision lists the following core platform services (“CPSs”) that are provided by Meta and which individually constitute an important gateway for business users to reach end users: (i) Meta’s online social networking service Facebook; (ii) Meta’s online social networking service Instagram; (iii) Meta’s online advertising service (“OAS”) Meta Ads; (iv) Meta’s number independent interpersonal communications service (“NIICS”) WhatsApp; (v) Meta’s NIICS Messenger; and (vi) Meta’s online intermediation service Marketplace.
- (2) Pursuant to Article 20(1) of Regulation (EU) 2022/1925, where the Commission intends to open proceedings with a view to the possible adoption of decisions

⁽¹⁾ Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act), OJ L 265, 12.10.2022, p. 1–66.

⁽²⁾ C(2023) 6105.

pursuant to Articles 8, 29 and 30 of that Regulation, it shall adopt a decision opening proceedings.

- (3) Pursuant to Article 29(1), point (a), of Regulation (EU) 2022/1925, where the Commission finds that a gatekeeper does not comply with any of the obligations laid down in Article 5, 6 or 7 of that Regulation, it shall adopt an implementing act setting out its finding of non-compliance. In such an implementing act, the Commission may also impose a fine pursuant to Article 30(1), point (a) of Regulation (EU) 2022/1925. The Commission may also impose periodic penalty payments pursuant to Article 31(1), point (h) of Regulation (EU) 2022/1925 in order to compel a gatekeeper to comply with such an implementing act.
- (4) Pursuant to Article 3(10) of Regulation (EU) 2022/1925, within six months after a CPS has been listed in the designation decision, the gatekeeper shall comply with the obligations laid down in Articles 5, 6 and 7 of that Regulation. Consequently, within six months from the Designation Decision, Meta shall comply, inter alia, with the obligations laid down in Article 5(2) of Regulation in relation to the CPSs listed in the Designation Decision.
- (5) According to Article 5(2) of Regulation (EU) 2022/1925, gatekeepers shall not:
 - (a) process, for the purpose of providing online advertising services, personal data of end users using services of third parties that make use of CPSs of the gatekeeper;
 - (b) combine personal data from the relevant CPS with personal data from any further CPSs or from any other services provided by the gatekeeper or with personal data from third-party services;
 - (c) cross-use personal data from the relevant CPS in other services provided separately by the gatekeeper, including other CPSs, and vice versa;
 - (d) sign in end users to other services of the gatekeeper in order to combine personal data;

unless the end user has been presented with the specific choice and has given consent within the meaning of Article 4, point (11), and Article 7 of Regulation (EU) 2016/679.³

- (6) Recital 36 of Regulation (EU) 2022/1925 explains that *‘[t]he processing, for the purpose of providing online advertising services, of personal data from third parties using core platform services gives gatekeepers potential advantages in*

⁽³⁾ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ L 119, 4.5.2016, p. 1.

terms of accumulation of data, thereby raising barriers to entry. This is because gatekeepers process personal data from a significantly larger number of third parties than other undertakings’, and that to ensure contestability ‘gatekeepers should enable end users to freely choose to opt-in to such data processing and sign-in practices by offering a less personalised but equivalent alternative, and without making the use of the core platform service or certain functionalities thereof conditional upon the end user’s consent’.

(7) Recital 37 of Regulation (EU) 2022/1925 further clarifies that *‘[t]he less personalised alternative should not be different or of degraded quality compared to the service provided to the end users who provide consent, unless a degradation of quality is a direct consequence of the gatekeeper not being able to process such personal data or signing in end users to a service. Not giving consent should not be more difficult than giving consent. When the gatekeeper requests consent, it should proactively present a user-friendly solution to the end user to provide, modify or withdraw consent in an explicit, clear and straightforward manner.’*

(8) On 6 March 2024, Meta submitted to the Commission its compliance report pursuant to Article 11 of Regulation (EU) 2022/1925 (“Meta’s Compliance Report”). According to that report, to ensure compliance with Article 5(2) of Regulation (EU) 2022/1925 regarding the processing and combination of its users’ personal data from Meta Non-Ads Services (i.e. Meta’s other CPSs and distinct services) for the provision of Meta’s personalised advertising service in Meta Ads CPS, Meta has decided to provide its users with the choice whether they:

(a) Consent to the processing and the combination of their personal data from the Non-Ads Services in the Meta Ads CPS for the purpose of personalised advertising. Where end users provide such consent, the Facebook and Instagram services can continue to be funded by personalised advertising and delivered to such end users free of charge; or

(b) Withhold their consent to the processing and combination of their personal data from the Non-Ads Services in the Meta Ads CPS for personalised advertising. Where end users withhold such consent, they are provided with the option of purchasing an ad-free version of the Facebook and Instagram services that will need to be funded by a monthly subscription fee.⁴

(hereinafter referred to as the “Consent or Pay advertising model”)

(9) Following an initial examination of Meta’s Compliance Report and of the available information, the Commission has decided to examine whether the Consent or Pay advertising model implemented by Meta⁵ in the EEA complies

⁽⁴⁾ Paragraph 138 of the Compliance Report submitted by Meta on 7 March 2024.

⁽⁵⁾ See Chapter 1 of Meta’s Compliance Report.

with the obligations laid down in Article 5(2) of Regulation (EU) 2022/1925 with regard to data flows between, on the one hand, the OAS Meta Ads and, on the other hand, Meta's other CPSs and distinct services including, but not limited to, its online social networking services Facebook and Instagram; its NIICS Messenger; its online intermediation service Marketplace; and its distinct services Dating and Gaming Play. The Commission has also decided to examine whether the Consent or Pay advertising model undermines effective compliance with the obligations of Article 5(2) of Regulation (EU) 2022/1925 within the meaning of Article 13(4) or (6) of that Regulation.

- (10) In light of the above, the Commission has decided to open proceedings with a view to the possible adoption of a decision pursuant to Article 29 of Regulation (EU) 2022/1925 relating to potential non-compliance with Article 5(2) of that Regulation on the part of Meta, alone or in conjunction with Article 13(4) and/or (6) of that Regulation, in relation to its Consent or Pay advertising model.
- (11) The initiation of proceedings does not prejudice the outcome of the Commission's assessment regarding compliance. It merely indicates that the Commission will further pursue the case.
- (12) Pursuant to Article 38(7), second subparagraph, of Regulation (EU) 2022/1925, this opening of proceedings relieves the national competent authorities of the Member States enforcing the rules referred to in Article 1(6) of that Regulation of the possibility to conduct an investigation into the possible non-compliance of Meta's conduct referred to in recital (8) above with Article 5(2), points (a) and (b), of that Regulation on their respective territories, or ends it where it is already ongoing.
- (13) In accordance with Article 5(2) of Commission Implementing Regulation (EU) 2023/814,⁶ the Commission will make public this opening of proceedings.

Done at Brussels,

For the Commission

Thierry Breton
Member of the Commission

⁽⁶⁾ Commission Implementing Regulation (EU) 2023/814 of 14 April 2023 on detailed arrangements for the conduct of certain proceedings by the Commission pursuant to Regulation (EU) 2022/1925 of the European Parliament and of the Council, OJ L 102, 17.4.2023, p. 6.