



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL FOR COMMUNICATIONS NETWORKS,  
CONTENT AND TECHNOLOGY  
DIRECTORATE-GENERAL FOR COMPETITION

DG CNECT D – Online Platforms: Economy  
DG COMP J - Digital Platforms

Brussels  
CNECT.D/DNB/AM  
COMP.J/MK/VR

## **Digital Markets Act Data related obligations sub-group to the High-Level Group for the Digital Markets Act**

5<sup>th</sup> Meeting, 20 May 2025, Brussels

### **Meeting minutes <sup>(1)</sup>**

#### **1. Welcome by the Commission and adoption of the agenda**

The Commission welcomed the members of the Digital Markets Act Data related obligations sub-group to the High-Level Group for the Digital Markets Act (“HLG DMA Data sub-group”) and informed them that due to an ongoing strike in Brussels the meeting was exceptionally being held both in-person and online.

Then, the Commission presented the points to be discussed during the meeting and the agenda was adopted.

#### **2. Nature of the meeting**

The meeting was not public. Only the Commission and members of the HLG DMA Data sub-group attended.

#### **3. List of points discussed**

##### **3.1. Discussion on the ongoing work on “pay-or-consent”**

###### ***3.1.1. The Commission’s investigation on into Meta’s “Consent or Pay” advertising model***

The Commission presented its non-compliance decision of 23 April 2025, where it determined that Meta's “Consent or Pay” advertising model was non-compliant with Article 5(2) DMA, concerning the use of personal data for targeted ads on its Facebook and Instagram platforms during March to November 2024. The decision found that the binary choice model – consent to personalized ads or payment of a fee – inhibited specific user consent as required by the DMA, largely due to the lack of an equivalent, less personalised alternative and an imbalance of power and potential detriment

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<sup>(1)</sup> Published in the Register of Commission Expert Groups and Other Similar Entities, code number [E03904]

to end users. The Commission also imposed a cease-and-desist order on Meta, demanding that Meta complies with the DMA requirement to offer its end users - who refuse to consent to full use of personal data for targeted ads - a less personalised, but equivalent alternative. Meta has 60 days to adhere to the order. Although Meta introduced a so-called “less-personalized ads” option in November 2024, the compliance of this option remains under examination and was not part of the non-compliance decision. Issues that remain under investigation concern the neutral presentation and the dismissibility of the choice, the possible degradation of the service due to the introduction of ad breaks and the degree of data reduction. The Commission continues to monitor the new features.

During the Q&A session that followed, EDPB inquired about the personal data processing behind the alternatives now offered by Meta, seeking clarity on how each differs from the others. The Commission responded that it is currently examining the mechanics of Meta's new ads model,. While Meta has largely ceased processing personal data from the non-ads services, except for some demographics and location information, the Commission emphasized that the impact of data processing in the less personalized option still needs further monitoring due to uncertainties about its actual impact. In response to the EDPB's query about public access to the decision, the Commission confirmed that a redacted version will be published within the upcoming weeks.

ECN then enquired how the Commission's approach aligns with the UK Information Commissioner's Office (ICO) requirements and where discrepancies might lie. The Commission noted that the ICO has to adhere to many principles similar to the GDPR, despite some distinctions. The Commission highlighted the importance of ensuring a unified solution within the European Union.

### **3.1.2. Open tour de table on “Consent or Pay” related investigations by other authorities**

EDPS/EDPB highlighted that the Irish Data Protection Commission is currently assessing Meta's pay-or-consent model in the context of the orders for compliance set out in the final decisions of two statutory inquiries. Submissions were received from Meta in November 2024, with replies to requests for further additional information received in February 2025. They will keep the group informed upon reaching final assessment stage, valuing continued engagement with the Commission. EDPB also informed the HLG DMA Data sub-group about an ongoing court case in Cologne, where a consumer association has sued Meta for not obtaining consent from users on obtaining data for the personalised version. In the case, an injunction order was sought, with a court hearing expected in summer. The data protection supervisory authority of the German State of Hamburg was invited by the court to make a statement on the interpretation and application of existing EDPB documents on pay-or-consent, such as EDPB Opinion 8/2024 and its earlier guidelines on consent. Furthermore, EDPB mentioned work on the drafting of guidelines on pay-or-consent models. Finally, EDPB pointed to the General Court order dated 12 May 2025, rejecting an appeal by Meta against the EDPB opinion on pay or consent models and affirming that EDPB opinions are non-binding and do not produce third-party effects.

ECN reported no new findings on the pay-or-consent models but mentioned ongoing cases against gatekeepers by various national authorities.

CPC informed the group about their ongoing investigations into Meta's consent-or-pay model. Although Meta revised its model after receiving the CPC's joint position, and responded in October and November 2024, the CPC is still evaluating whether these changes meet EU consumer protection regulations, with no specific timeline for next steps. They emphasize the importance of coordinated efforts with other authorities under the DMA or the GDPR. The CPC is scrutinizing Meta's presentation of its model, particularly to ensure it is not misleading to consumers. In response to the Commission's questions about platform behaviours, CPC noted that previously aggressive practices have been addressed.

BEREC had no updates but inquired the Commission about other gatekeepers beyond Meta. The Commission stated that, as of now, pay-or-consent issues pertain uniquely to Meta.

The Commission clarified that beyond Consent or Pay, compliance with Article 5(2) DMA is still being assessed, backed by recently updated compliance reports, and informed of the upcoming enforcement workshops that are planned with each gatekeeper at the end of June or beginning of July, involving data discussions with many.

### **3.2. Presentation of the Commission’s and EDPB’ joint work to clarify and give guidance on the interplay between DMA and Regulation (EU) 2016/679**

The Commission and EDPS/EDPB presented their work on joint guidance on the interplay between the DMA and the GDPR. Project was initiated on 10 September 2024, aiming to ensure coherent application of the DMA and the GDPR, focusing on key obligations such as data combination and cross-use, alternative app distribution, data portability and data access, access to search data and messenger interoperability. The draft guidance inter alia highlights the need for specific choice and valid consent for data combination and cross-use, outlines how to enable alternative app distribution while applying GDPR obligations together with safeguarding device integrity and user security, where proven to be necessary and justified. The guidelines also stress that gatekeepers should not unduly prescribe GDPR compliance measures on apps distributed via alternative channels. It also addresses data portability by ensuring user control over personal data, facilitating innovation without compromising data protection standards. The guidance further covers data access, portability and interoperability under DMA provisions, and elaborating on maintaining service security and users’ privacy in those contexts. Regarding Article 6(11) DMA focusing on anonymisation practices, the guidance aims to maximise data usefulness while ensuring effective anonymisation.

As for next steps, the Commission and EDPB/EDPS informed that they are preparing a public consultation on the draft, expected in the coming months, which will seek input from gatekeepers, civil society, and consumers, with contributions also welcomed from the HLG DMA members. The feedback will inform the finalization of the guidance, ensuring it reflects all stakeholders’ viewpoints.

During the open discussion, BEREC highlighted the need for clarity on Article 7 DMA regarding the boundaries of opt-in consent and addressed interoperability of services within the EEA. They queried the status of users who exit the EEA for longer periods and their eligibility for benefiting from interoperability under Art. 7 DMA. The Commission pointed out that the main issue is to limit the need for gatekeepers to acquire additional personal data to enforce geographic limitations, while EDPB emphasized the importance of transparency in data use for monitoring user locations and the limitations on data collection stemming from the ePrivacy Directive.

In anticipation of the draft guidelines, the Commission welcomed feedback and suggested a virtual meeting to discuss contributions from the HLG members.

### **3.3. Overview of compliance measures and their changes on data portability and data access**

The Commission explained that is essential to implement Articles 6(9) and 6(10) DMA effectively, as they open the door to innovative opportunities utilizing data provided to and generated on these platforms. Recent efforts by the Commission and EDPB highlight the synergy and complementarity between the DMA and the GDPR in pursuing effective data portability while ensuring effective compliance with these regulations. Regular engagement with gatekeepers revealed that while current solutions have improved from the earlier phase, they still often fall short in particular of delivering the “continuous and real-time access” required by the DMA. Nonetheless, ongoing regulatory dialogues, informed by market feedback and third-party beneficiaries, emphasize the need for further innovative applications and smooth transitions like device and browser switching. The objective is to achieve seamless device transitions and more efficient data portability across different platforms. By way of an example, the objective of the currently on-going work on device switching between Alphabet and Apple is to ensure that switching between Android OS and iOS is as seamless for users as it is the case when switching Android OS-to-Android OS or iOS-to-iOS.

The Commission also informed that it had made significant progress and improvements through regulatory dialogues that led to advancements in data portability solutions. Despite these improvements, challenges remain, including some conservative communication strategy and often lack of transparency by the gatekeepers, which impacts third-party onboarding and transparency. Furthermore, the Commission and EDPB's joint guidelines clarify the minimal checks by gatekeepers when verifying privacy and security for data transfers, aligning them with the GDPR and Article 8(1) DMA. Efforts continue to encourage gatekeepers to promote data portability solutions, and to address concerns raised about access by business users and authorized third parties under Article 6(10) DMA. These ongoing dialogues and adjustments aim to ensure innovative opportunities emerge from effective data access and portability.

After the presentation, EDPB sought clarification on the differences in data portability approaches between Alphabet (“pull solution) and Meta (“push solution”). The Commission explained the differences and noted that this has resulted in varied reception from third parties, in particular strong reservation about Meta’s solution, which requires significant up-front investment, while welcoming Alphabet’s solutions. EDPB also raised concerns about the general implementation of an API for data sharing.

BEREC inquired whether trade or business secrets related issues have been a barrier to data portability, questioning if gatekeepers oppose data access on these grounds. The Commission responded that trade secrets have not been highlighted as a significant argument in the context of Article 6(10) DMA, where the focus is on user-provided and user-generated content. Additionally, BEREC asked about the Commission's ongoing work with gatekeepers, specifically referencing Article 6(11) DMA and the Commission pointed to previous discussions on the specific topic and to the ongoing work on the joint guidelines (point 3.2) and mentioned that no other relevant new development were to be reported.

#### **4. Closing remarks and next steps**

During the last item of the agenda, EDPB raised the topic of Meta's personal data processing for AI training and inquired whether it would be analysed under the DMA, notably Article 5(2) DMA. The Commission acknowledged the ongoing discussions with Meta about their general compliance with the DMA and suggested that this could be an interesting topic for future meetings, potentially involving the AI subgroup.

EDPB also reported on receiving the second round of Article 15 DMA reports, including the first report from Booking.com. They plan to conduct the same thorough process as previously undertaken in 2024.

As of next steps, the Commission reiterated the public consultation on the joint guidance of the Commission and EDPB and asked all interested authorities part of the DMA High-Level Group to convey their comments.

To end the meeting, the Commission thanked all members of the HLG DMA Data sub-group for their engagement and valuable contributions to the meeting.

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