



Digital Services Act e Digital Markets Acts. Le nuove proposte della Commissione per un mercato digitale più equo ed aperto

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In data 15 dicembre 2020, la Commissione ha presentato la legge sui servizi digitali¹ e la legge sui mercati digitali², c.d. *Digital Services Act* e *Digital Markets Act*, due nuove proposte che mirano a riformare lo spazio digitale europeo per allinearli ai progressi della tecnologia che, negli ultimi anni, ha completamente rivoluzionato la nostra società.

Frutto di un lungo processo di riflessione che, oltre alle istituzioni europee e agli Stati Membri, ha coinvolto anche i diversi *stakeholder*, le iniziative legislative si propongono, da un lato, di garantire ai consumatori l'accesso ad un'ampia

gamma di prodotti e servizi *online* sicuri ed affidabili proteggendone i diritti fondamentali e, dall'altro, di promuovere l'innovazione, la crescita e la competitività delle piccole e medie imprese europee (*Small and Medium Enterprises*, SMEs) vietando l'imposizione di condizioni inique da parte delle piattaforme *online* che fungono da controllori dell'accesso al mercato unico (c.d. *gatekeeper*).

La [legge sui servizi digitali](#)

¹ Com. Comm. COM(2020) 825 final del 15.12.2020, *Proposal for a Regulation of the European Parliament and of the Council on a Single Market For Digital Services (Digital Services Act) and amending Directive 2000/31/EC*.

² Com. Comm. COM(2020) 842 final del 15.12.2020, *Proposal for a Regulation of the European Parliament and of the Council on contestable and fair markets in the digital sector (Digital Markets Act)*.



Da quando la Direttiva sul commercio elettronico³ è entrata in vigore vent'anni or sono, il panorama europeo dei servizi digitali è radicalmente mutato. Se da un lato, infatti, gli intermediari *online*, ed in particolare le piattaforme, hanno agevolato gli scambi transfrontalieri entro ed oltre i confini dell'Unione, offrendo nuove opportunità di sviluppo alle imprese ed apportando benefici ai consumatori, dall'altro lato, sono parimenti aumentati tanto il loro uso distorto che consente la diffusione e la commercializzazione di contenuti illegali *online*, quanto i rischi per la *privacy* degli utenti dovuti al flusso esponenziale di informazioni che circolano in rete. Di conseguenza, la nuova legge sui servizi digitali, pur continuando ad agevolare l'innovazione a livello transfrontaliero, disciplinerà più rigorosamente gli obblighi dei *provider* di servizi digitali che fungono da intermediari e collegano i consumatori a merci, servizi e contenuti, dando vita ad un quadro armonizzato europeo per quanto riguarda gli obblighi di diligenza per le piattaforme ed i servizi di *hosting*

nonché la protezione dei diritti dei consumatori.

Più particolarmente, la legge sui servizi digitali prevede obblighi di diligenza distinti per gli intermediari *online* a seconda della natura dei servizi offerti, delle loro dimensioni e del loro impatto. Tutti i servizi digitali che operano in funzione intermediaia dovranno, tra le altre cose, i) stabilire un unico punto di contatto che consenta la comunicazione diretta, per via elettronica, con le autorità degli Stati Membri, la Commissione e il Comitato europeo per i servizi digitali⁴, ii) includere, nei loro termini e condizioni, le informazioni sulle eventuali restrizioni relative all'uso dei loro servizi in aggiunta a quelle già fornite ai destinatari, operando in modo diligente, obiettivo e proporzionato⁵, nonché iii) pubblicare, almeno una volta all'anno, rapporti chiari, facilmente comprensibili e dettagliati sulle operazioni di regolazione e moderazione dei contenuti poste in essere nel periodo di riferimento⁶. In aggiunta a tali obblighi, i servizi di

³ Direttiva 2000/31/CE del Parlamento europeo e del Consiglio dell'8 giugno 2000 relativa a taluni aspetti giuridici dei servizi della società dell'informazione, in particolare il commercio elettronico, nel mercato interno, *GUUE L 178 del 17.07.2000*.

⁴ L'articolo 10 della legge sui servizi digitali, intitolato "Points of contact", al paragrafo 1 dispone: "... *Providers of intermediary services shall establish a single point of contact allowing for direct communication, by electronic means, with Member States' authorities, the Commission and the Board referred to in Article 47 for the application of this Regulation...*".

⁵ L'articolo 12 della legge sui servizi digitali, intitolato "Terms and conditions", al paragrafo 1 dispone: "... *Providers of intermediary services shall include information on any restrictions that they impose in relation to the use of their service in respect of information provided by the recipients of the service, in their terms and conditions. That information shall include information on any policies, procedures, measures and tools used for the purpose of content moderation, including algorithmic decision-making and human review. It shall be set out in clear and unambiguous language and shall be publicly available in an easily accessible format...*".

⁶ L'articolo 13 della legge sui servizi digitali, intitolato "Transparency reporting obligations for providers of intermediary services", al paragrafo 1 dispone: "... *Providers of intermediary services shall publish, at least once a year, clear, easily comprehensible and detailed reports on any content moderation they engaged in during the relevant period. Those reports shall include, in particular, information on the following, as applicable:*

(a) the number of orders received from Member States' authorities, categorised by the type of illegal content concerned, including orders issued in accordance with Articles 8 and 9, and the average time needed for taking the action specified in those orders;

(b) the number of notices submitted in accordance with Article 14, categorised by the type of alleged illegal content concerned, any action taken pursuant to the notices by differentiating whether the action was taken on the basis of the law or the terms and conditions of the provider, and the average time needed for taking the action;

(c) the content moderation engaged in at the providers' own initiative, including the number and type of measures taken that affect the availability, visibility and accessibility of information provided by the recipients of the service and the recipients' ability to provide information, categorised by the type of reason and basis for taking those measures;

hosting dovranno predisporre meccanismi facilmente accessibili per consentire a qualsiasi persona fisica o entità di notificare loro la presenza di eventuali contenuti illegali⁷. Tutte le piattaforme *online*, ad eccezione delle SMEs, dovranno, tra le altre cose, fornire ai destinatari del servizio, per un periodo di almeno sei mesi, l'accesso ad un sistema interno che consenta loro di inviare reclami, in forma elettronica e gratuitamente, contro le decisioni delle singole piattaforme, qualora le informazioni fornite presentino contenuti illegali o incompatibili con i termini e le condizioni del servizio offerto⁸. Esse, inoltre, dovranno informare le autorità competenti nel caso in cui vengano a

conoscenza di informazioni idonee a sospettare reati gravi che comportano una minaccia per la vita o l'incolumità delle persone⁹. Inoltre, qualora consentano ai consumatori di concludere contratti a distanza con professionisti che utilizzano i loro servizi, dovranno compiere ogni ragionevole sforzo per valutarne l'affidabilità e rendere pubbliche le relative informazioni¹⁰. Infine, a causa dei particolari rischi che possono comportare nella diffusione di contenuti illegali a danno della società, le piattaforme *online* che raggiungono almeno 45 milioni di utenti nell'Unione (ovvero che rappresentano il 10% della popolazione europea) saranno soggette ad obblighi ulteriori, quali quello di

(d) the number of complaints received through the internal complaint-handling system referred to in Article 17, the basis for those complaints, decisions taken in respect of those complaints, the average time needed for taking those decisions and the number of instances where those decisions were reversed...

⁷ L'articolo 14 della legge sui servizi digitali, intitolato "Notice and action mechanisms", al paragrafo 1 dispone: "... Providers of hosting services shall put mechanisms in place to allow any individual or entity to notify them of the presence on their service of specific items of information that the individual or entity considers to be illegal content. Those mechanisms shall be easy to access, user-friendly, and allow for the submission of notices exclusively by electronic means..."

⁸ L'articolo 17 della legge sui servizi digitali, intitolato "Internal complaint-handling system", al paragrafo 1 dispone: "... Online platforms shall provide recipients of the service, for a period of at least six months following the decision referred to in this paragraph, the access to an effective internal complaint-handling system, which enables the complaints to be lodged electronically and free of charge, against the following decisions taken by the online platform on the ground that the information provided by the recipients is illegal content or incompatible with its terms and conditions:

(a) decisions to remove or disable access to the information;

(b) decisions to suspend or terminate the provision of the service, in whole or in part, to the recipients;

(c) decisions to suspend or terminate the recipients' account..."

⁹ L'articolo 21 della legge sui servizi digitali, intitolato "Notification of suspicions of criminal offences", al paragrafo 1 dispone: "... Where an online platform becomes aware of any information giving rise to a suspicion that a serious criminal offence involving a threat to the life or safety of persons has taken place, is taking place or is likely to take place, it shall promptly inform the law enforcement or judicial authorities of the Member State or Member States concerned of its suspicion and provide all relevant information available..."

¹⁰ L'articolo 22 della legge sui servizi digitali, intitolato "Traceability of traders", al paragrafo 1 dispone: "... Where an online platform allows consumers to conclude distance contracts with traders, it shall ensure that traders can only use its services to promote messages on or to offer products or services to consumers located in the Union if, prior to the use of its services, the online platform has obtained the following information:

(a) the name, address, telephone number and electronic mail address of the trader;

(b) a copy of the identification document of the trader or any other electronic identification as defined by Article 3 of Regulation (EU) No 910/2014 of the European Parliament and of the Council;

(c) the bank account details of the trader, where the trader is a natural person;

(d) the name, address, telephone number and electronic mail address of the economic operator, within the meaning of Article 3(13) and Article 4 of Regulation (EU) 2019/1020 of the European Parliament and the Council or any relevant act of Union law;

(e) where the trader is registered in a trade register or similar public register, the trade register in which the trader is registered and its registration number or equivalent means of identification in that register;

(f) a self-certification by the trader committing to only offer products or services that comply with the applicable rules of Union law..."

effettuare una valutazione dei rischi sistemici determinati dal o relativi al funzionamento e all'utilizzo dei propri servizi¹¹, di adottare misure ragionevoli ed efficaci al fine di mitigarli¹² e di sottoporsi a verifiche esterne indipendenti a proprie spese almeno una volta all'anno¹³. Per la verifica dell'adempimento dei propri obblighi da parte degli intermediari *online*, infine, la nuova legge istituisce un

apposito nuovo meccanismo di sorveglianza ed *enforcement*. Più particolarmente, ciascuno Stato Membro dovrà nominare un Coordinatore dei servizi digitali, che sarà un'autorità imparziale ed indipendente responsabile della supervisione dei servizi di intermediazione stabiliti nel proprio Stato e/o del coordinamento con le autorità specializzate nel settore¹⁴. Il Coordinatore potrà, tra le altre cose,

¹¹ L'articolo 26 della legge sui servizi digitali, intitolato "Risk assessment", al paragrafo 1 dispone: "... *Very large online platforms shall identify, analyse and assess, from the date of application referred to in the second subparagraph of Article 25(4), at least once a year thereafter, any significant systemic risks stemming from the functioning and use made of their services in the Union. This risk assessment shall be specific to their services and shall include the following systemic risks:*

(a) the dissemination of illegal content through their services;

(b) any negative effects for the exercise of the fundamental rights to respect for private and family life, freedom of expression and information, the prohibition of discrimination and the rights of the child, as enshrined in Articles 7, 11, 21 and 24 of the Charter respectively;

(c) intentional manipulation of their service, including by means of inauthentic use or automated exploitation of the service, with an actual or foreseeable negative effect on the protection of public health, minors, civic discourse, or actual or foreseeable effects related to electoral processes and public security...".

¹² L'articolo 27 della legge sui servizi digitali, intitolato "Mitigation of risks", al paragrafo 1 dispone: "... *Very large online platforms shall put in place reasonable, proportionate and effective mitigation measures, tailored to the specific systemic risks identified pursuant to Article 26. Such measures may include, where applicable:*

(a) adapting content moderation or recommender systems, their decision-making processes, the features or functioning of their services, or their terms and conditions;

(b) targeted measures aimed at limiting the display of advertisements in association with the service they provide;

(c) reinforcing the internal processes or supervision of any of their activities in particular as regards detection of systemic risk;

(d) initiating or adjusting cooperation with trusted flaggers in accordance with Article 19;

(e) initiating or adjusting cooperation with other online platforms through the codes of conduct and the crisis protocols referred to in Article 35 and 37 respectively...".

¹³ L'articolo 28 della legge sui servizi digitali, intitolato "Independent audit", al paragrafo 1 dispone: "... *Very large online platforms shall be subject, at their own expense and at least once a year, to audits to assess compliance with the following:*

(a) the obligations set out in Chapter III;

(b) any commitments undertaken pursuant to the codes of conduct referred to in Articles 35 and 36 and the crisis protocols referred to in Article 37...".

¹⁴ L'articolo 38 della legge sui servizi digitali, intitolato "Competent authorities and Digital Services Coordinators", ai paragrafi 1-2 dispone: "... *Member States shall designate one or more competent authorities as responsible for the application and enforcement of this Regulation ('competent authorities')*.

Member States shall designate one of the competent authorities as their Digital Services Coordinator. The Digital Services Coordinator shall be responsible for all matters relating to application and enforcement of this Regulation in that Member State, unless the Member State concerned has assigned certain specific tasks or sectors to other competent authorities. The Digital Services Coordinator shall in any event be responsible for ensuring coordination at national level in respect of those matters and for contributing to the effective and consistent application and enforcement of this Regulation throughout the Union.

For that purpose, Digital Services Coordinators shall cooperate with each other, other national competent authorities, the Board and the Commission, without prejudice to the possibility for Member States to provide for regular exchanges of views with other authorities where relevant for the performance of the tasks of those other authorities and of the Digital Services Coordinator.

richiedere ai *provider* di fornire le informazioni relative a sospette violazioni della legge entro un periodo di tempo ragionevole, effettuare ispezioni nei locali dell'impresa¹⁵ ed irrogare ammende fino al 6% del fatturato globale¹⁶. I Coordinatori dei servizi digitali nazionali collaboreranno all'interno del Comitato europeo per i servizi digitali, un gruppo consultivo indipendente che potrà fornire loro sostegno sotto forma di analisi, relazioni e raccomandazioni¹⁷.

La legge sui mercati digitali

Ancorché nell'economia digitale europea siano attive oltre 10.000 piattaforme *online*, le quote maggiori dei profitti e

delle utilità fanno capo ad un ristretto numero di esse. Questi *gatekeeper* hanno, pertanto, un impatto estremamente significativo sul mercato interno in quanto rappresentano un punto di accesso determinante per gli utenti commerciali verso i loro clienti, beneficiando, perciò, di una posizione di *leadership*, che spesso si traduce in pratiche commerciali sleali nei confronti dei consumatori. Di conseguenza, sulla base del c.d. "Regolamento P2B" del 2018¹⁸ la legge sui mercati digitali introduce un quadro di norme comuni che, attraverso un meccanismo di applicazione basato su indagini di mercato, mira ad impedire ai *gatekeeper*

Where a Member State designates more than one competent authority in addition to the Digital Services Coordinator, it shall ensure that the respective tasks of those authorities and of the Digital Services Coordinator are clearly defined and that they cooperate closely and effectively when performing their tasks. The Member State concerned shall communicate the name of the other competent authorities as well as their respective tasks to the Commission and the Board...

¹⁵ L'articolo 41 della legge sui servizi digitali, intitolato "Powers of Digital Services Coordinators", al paragrafo 1 dispone: "... *Where needed for carrying out their tasks, Digital Services Coordinators shall have at least the following powers of investigation, in respect of conduct by providers of intermediary services under the jurisdiction of their Member State:*

(a) the power to require those providers, as well as any other persons acting for purposes related to their trade, business, craft or profession that may reasonably be aware of information relating to a suspected infringement of this Regulation, including, organisations performing the audits referred to in Articles 28 and 50(3), to provide such information within a reasonable time period;

(b) the power to carry out on-site inspections of any premises that those providers or those persons use for purposes related to their trade, business, craft or profession, or to request other public authorities to do so, in order to examine, seize, take or obtain copies of information relating to a suspected infringement in any form, irrespective of the storage medium;

(c) the power to ask any member of staff or representative of those providers or those persons to give explanations in respect of any information relating to a suspected infringement and to record the answers...

¹⁶ L'articolo 42 della legge sui servizi digitali, intitolato "Penalties", al paragrafo 3 dispone: "... *Member States shall ensure that the maximum amount of penalties imposed for a failure to comply with the obligations laid down in this Regulation shall not exceed 6 % of the annual income or turnover of the provider of intermediary services concerned. Penalties for the supply of incorrect, incomplete or misleading information, failure to reply or rectify incorrect, incomplete or misleading information and to submit to an on-site inspection shall not exceed 1% of the annual income or turnover of the provider concerned...*

¹⁷ L'articolo 47 della legge sui servizi digitali, intitolato "European Board for Digital Services", dispone: "... *An independent advisory group of Digital Services Coordinators on the supervision of providers of intermediary services named 'European Board for Digital Services' (the 'Board') is established. The Board shall advise the Digital Services Coordinators and the Commission in accordance with this Regulation to achieve the following objectives:*

(a) Contributing to the consistent application of this Regulation and effective cooperation of the Digital Services Coordinators and the Commission with regard to matters covered by this Regulation;

(b) coordinating and contributing to guidance and analysis of the Commission and Digital Services Coordinators and other competent authorities on emerging issues across the internal market with regard to matters covered by this Regulation;

(c) assisting the Digital Services Coordinators and the Commission in the supervision of very large online platforms...

¹⁸ Regolamento (UE) 2019/1150 del Parlamento europeo e del Consiglio, del 20 giugno 2019, che promuove equità e trasparenza per gli utenti commerciali dei servizi di intermediazione online, GUUE L 186 dell'11.07.2019. Per ulteriori informazioni si veda il nostro precedente contributo, disponibile al seguente [LINK](#).

di imporre condizioni inique alle imprese e ai consumatori ed a garantire una maggiore apertura dei più importanti servizi digitali.

La legge sui mercati digitali si applica solamente alle piattaforme *online* che, controllando almeno un c.d. “servizio di piattaforma di base” (*core platform service*), avendo un impatto significativo sul mercato interno ed essendo dotate di una base di utenti vasta e duratura in più Stati Membri (o che si prospetta come tale), possono essere qualificate *gatekeeper*. Più particolarmente, la legge richiede al riguardo la presenza di tre criteri cumulativi, che si presumono sussistere salva la prova contraria da parte della piattaforma; vale a dire, i) un fatturato annuo nello Spazio Economico Europeo (SEE) pari o superiore a 6,5 miliardi di euro negli ultimi tre esercizi (o una capitalizzazione media di borsa/valore equo di mercato equivalente

pari ad almeno 65 miliardi di euro nell'ultimo esercizio) nonché un servizio di piattaforma di base fornito in almeno tre Stati Membri, ii) la gestione, nell'ultimo esercizio, di un servizio di piattaforma di base con più di 45 milioni di utenti finali attivi su base mensile stabiliti o ubicati nell'Unione e più di 10.000 utenti commerciali attivi su base annua, e iii) la presenza dei suddetti criteri in tutti e tre gli esercizi precedenti¹⁹.

Il compito di valutare se una piattaforma possa venire qualificata *gatekeeper* spetterà alla Commissione, che vi potrà procedere sulla base delle informazioni fornite dalle stesse piattaforme e/o a seguito di un'apposita indagine sul mercato. In quest'ultimo caso, la Commissione dovrà comunicare le sue conclusioni preliminari alla piattaforma entro sei mesi dall'apertura dell'indagine²⁰.

¹⁹ L'articolo 3 della legge sui mercati digitali, intitolato “Designation of gatekeepers”, ai paragrafi 1-2 dispone: “... *A provider of core platform services shall be designated as gatekeeper if:*

(a) it has a significant impact on the internal market;

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

(c) it enjoys an entrenched and durable position in its operations or it is foreseeable that it will enjoy such a position in the near future.

A provider of core platform services shall be presumed to satisfy:

(a) the requirement in paragraph 1 point (a) where the undertaking to which it belongs achieves an annual EEA turnover equal to or above EUR 6.5 billion in the last three financial years, or where the average market capitalisation or the equivalent fair market value of the undertaking to which it belongs amounted to at least EUR 65 billion in the last financial year, and it provides a core platform service in at least three Member States;

(b) the requirement in paragraph 1 point (b) where it provides a core platform service that has more than 45 million monthly active end users established or located in the Union and more than 10 000 yearly active business users established in the Union in the last financial year;

for the purpose of the first subparagraph, monthly active end users shall refer to the average number of monthly active end users throughout the largest part of the last financial year;

(c) the requirement in paragraph 1 point (c) where the thresholds in point (b) were met in each of the last three financial years...”

²⁰ L'articolo 15 della legge sui mercati digitali, intitolata “Market investigation for designating gatekeepers”, dispone: “... *The Commission may conduct a market investigation for the purpose of examining whether a provider of core platform services should be designated as a gatekeeper pursuant to Article 3(6), or in order to identify core platform services for a gatekeeper pursuant to Article 3(7). It shall endeavour to conclude its investigation by adopting a decision in accordance with the advisory procedure referred to in Article 32(4) within twelve months from the opening of the market investigation.*

In the course of a market investigation pursuant to paragraph 1, the Commission shall endeavour to communicate its preliminary findings to the provider of core platform services concerned within six months from the opening of the investigation. In the preliminary findings, the Commission shall explain whether it considers, on a provisional basis, that the provider of core platform services should be designated as a gatekeeper pursuant to Article 3(6).

Where the provider of core platform services satisfies the thresholds set out in Article 3(2), but has presented significantly substantiated arguments in accordance with Article 3(4), the Commission shall endeavour to conclude the market investigation within five months from the opening of the

La qualifica di “*gatekeeper*” per una piattaforma ne comporta l’assoggettamento a specifici obblighi che mirano a garantire un ambiente *online* equo per le imprese e per i consumatori, e che dovranno essere rispettati entro i sei mesi successivi alla data di attribuzione della qualità, pena l’irrogazione de un’ammenda fino al 10% del fatturato mondiale totale annuo²¹ nonché una penalità di mora fino al 5% di tale fatturato²². Nello specifico, i *gatekeeper* dovranno, tra le altre cose, i) astenersi dall'utilizzare, in concorrenza con altri utenti, dati non disponibili pubblicamente generati da questi ultimi attraverso le proprie attività, ii) consentire agli utenti di disinstallare eventuali *software* o applicazioni preinstallati (con la possibilità, in ogni caso, di limitare tale

disinstallazione in relazione ad applicazioni e/o *software* essenziali per il funzionamento del sistema operativo e che non possono essere tecnicamente offerte in modo autonomo da terzi), iii) astenersi dal riservare un trattamento di favore nel posizionamento dei propri servizi e prodotti o di quelli offerti da terzi appartenenti al proprio gruppo rispetto ai prodotti e servizi di terzi, applicando condizioni eque e non discriminatorie, iv) fornire alle imprese che fanno pubblicità sulla loro piattaforma l'accesso agli strumenti con cui il *gatekeeper* misura le prestazioni nonché le informazioni necessarie per effettuare una propria verifica indipendente dei loro annunci, e v) applicare condizioni generali di accesso al proprio negozio di applicazioni eque e non discriminatorie²³.

market investigation by a decision pursuant to paragraph 1. In that case the Commission shall endeavour to communicate its preliminary findings pursuant to paragraph 2 to the provider of core platform services within three months from the opening of the investigation.

When the Commission pursuant to Article 3(6) designates as a gatekeeper a provider of core platform services that does not yet enjoy an entrenched and durable position in its operations, but it is foreseeable that it will enjoy such a position in the near future, it shall declare applicable to that gatekeeper only obligations laid down in Article 5(b) and Article 6(1) points (e), (f), (h) and (i) as specified in the designation decision. The Commission shall only declare applicable those obligations that are appropriate and necessary to prevent that the gatekeeper concerned achieves by unfair means an entrenched and durable position in its operations. The Commission shall review such a designation in accordance with the procedure laid down in Article 4...”

²¹ L’articolo 26 della legge sui mercati digitali, intitolato “Fines”, al paragrafo 1 dispone: “... *In the decision pursuant to Article 25, the Commission may impose on a gatekeeper fines not exceeding 10% of its total turnover in the preceding financial year where it finds that the gatekeeper, intentionally or negligently, fails to comply with:*

- (a) any of the obligations pursuant to Articles 5 and 6;*
- (b) the measures specified by the Commission pursuant to a decision under Article 7(2);*
- (c) measures ordered pursuant to Article 16(1);*
- (d) a decision ordering interim measures pursuant to Article 22;*
- (e) a commitment made binding by a decision pursuant to Article 23...”*

²² L’articolo 27 della legge sui mercati digitali, intitolato “Periodic penalty payments”, al paragrafo 1 dispone: “... *The Commission may by decision impose on undertakings, including gatekeepers where applicable, periodic penalty payments not exceeding 5 % of the average daily turnover in the preceding financial year per day, calculated from the date set by that decision, in order to compel them:*

- (a) to comply with the decision pursuant to Article 16(1);*
- (b) to supply correct and complete information within the time limit required by a request for information made by decision pursuant to Article 19;*
- (c) to ensure access to data-bases and algorithms of undertakings and to supply explanations on those as required by a decision pursuant to Article 19;*
- (d) to submit to an on-site inspection which was ordered by a decision taken pursuant to Article 21;*
- (e) to comply with a decision ordering interim measures taken pursuant to Article 22(1);*
- (f) to comply with commitments made legally binding by a decision pursuant to Article 23(1);*
- (g) to comply with a decision pursuant to Article 25(1)...”*

²³ L’articolo 6 della legge sui mercati digitali, intitolato “Obligations for gatekeepers susceptible of being further specified”, al paragrafo 1 dispone: “... *In respect of each of its core platform services identified pursuant to Article 3(7), a gatekeeper shall:*

Conclusioni

Le nuove proposte, che saranno discusse dal Parlamento Europeo e dagli Stati Membri per divenire direttamente applicabili in tutta l'Unione in caso di adozione, sono parte dell'ambizioso obiettivo della Commissione di garantire mercati digitali più equi ed aperti, rendendo quello appena iniziato il "decennio digitale" dell'Europa,

introducendo degli strumenti efficaci che consentano a tutti gli attori dell'ecosistema *online* di contrastare i contenuti, le merci ed i servizi illegali, garantendo ai consumatori la possibilità di contestare le decisioni prese dalle piattaforme, per rendere l'esperienza *online* degli utenti europei più sicura, nel rispetto delle norme sulla protezione dei dati personali²⁴.

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- (a) refrain from using, in competition with business users, any data not publicly available, which is generated through activities by those business users, including by the end users of these business users, of its core platform services or provided by those business users of its core platform services or by the end users of these business users;
- (b) allow end users to un-install any pre-installed software applications on its core platform service without prejudice to the possibility for a gatekeeper to restrict such un-installation 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;
- (c) allow the installation and effective use of third party software applications or software application stores using, or interoperating with, operating systems of that gatekeeper and allow these software applications or software application stores to be accessed by means other than the core platform services of that gatekeeper. The gatekeeper shall not be prevented from taking proportionate measures to ensure that third party software applications or software application stores do not endanger the integrity of the hardware or operating system provided by the gatekeeper;
- (d) refrain from treating more favourably in ranking services and products offered by the gatekeeper itself or by any third party belonging to the same undertaking compared to similar services or products of third party and apply fair and non-discriminatory conditions to such ranking;
- (e) refrain from technically restricting the ability of end users to switch between and subscribe to different software applications and services to be accessed using the operating system of the gatekeeper, including as regards the choice of Internet access provider for end users;
- (f) allow business users and providers of ancillary services access to and interoperability with the same operating system, hardware or software features that are available or used in the provision by the gatekeeper of any ancillary services;
- (g) provide advertisers and publishers, upon their request and free of charge, with access to the performance measuring tools of the gatekeeper and the information necessary for advertisers and publishers to carry out their own independent verification of the ad inventory;
- (h) provide effective portability of data generated through the activity of a business user or end user and shall, in particular, provide tools for end users to facilitate the exercise of data portability, in line with Regulation EU 2016/679, including by the provision of continuous and real-time access;
- (i) provide business users, or third parties authorised by a business user, free of charge, with effective, high-quality, continuous and real-time access and use of aggregated or non-aggregated data, that is provided for or generated in the context of the use of the relevant core platform services by those business users and the end users engaging with the products or services provided by those business users; for personal data, provide access and use only where directly connected with the use effectuated by the end user in respect of the products or services offered by the relevant business user through the relevant core platform service, and when the end user opts in to such sharing with a consent in the sense of the Regulation (EU) 2016/679;
- (j) provide to any third party providers of online search engines, upon their request, with access on fair, reasonable and non-discriminatory terms to ranking, query, click and view data in relation to free and paid search generated by end users on online search engines of the gatekeeper, subject to anonymisation for the query, click and view data that constitutes personal data;
- (k) apply fair and non-discriminatory general conditions of access for business users to its software application store designated pursuant to Article 3 of this Regulation...".

²⁴ Regolamento (UE) 2016/679 del Parlamento europeo e del Consiglio, del 27 aprile 2016, relativo alla protezione delle persone fisiche con riguardo al trattamento dei dati personali, nonché alla libera circolazione di tali dati e che abroga la direttiva 95/46/CE, GUUE L 119 del 04.05.2016.



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