



# DMA

## A summary and a call to action

### WHY?

On November 1st 2022, the European regulation on Digital Markets Act (DMA) came into force, without national transposition. **The effective implementation of the regulation depends largely on the responsiveness of companies using the platform services of the so-called “Gatekeepers”.** Concrete cases or information concerning a Gatekeepers’ failure to comply with the obligations in the DMA, will help accelerate the **rebalancing of the markets** for these digital services.

# acting to reduce unfair practices by large digital suppliers.

### WHAT?

The European regulation on contestable and fair markets in the digital sector, or DMA, aims at remedying the structural imbalances of the digital markets by imposing reinforced obligations on the main hyperscalers<sup>1</sup>. As of 2024, each company meeting certain criteria (called a “Gatekeeper”) will have to prove its compliance with the DMA for the services included in its scope<sup>2</sup>. DMA **does not cover all digital markets** but specifically concerns triangular relationships in which user companies depend on platforms (owned by Gatekeepers) for accessing end users.

<sup>1</sup> Hyperscale is the process of pooling server resources (cloud computing). A hyperscaler is an entity that offers this service such as Scaleway, Switch, Alibaba, IBM, QTS, Digital Realty Trust, Equinix, Oracle, Facebook, Amazon Web Services, SAP, Microsoft or Google, etc.

<sup>2</sup> Online intermediation services (such as marketplaces, etc.); online search engines; online social networking services; video sharing platform services; interpersonal communication services independent of number, operating systems; operating systems; web browsers; virtual assistants; cloud computing services; and online advertising services.

## TIMELINE FOR DMA



## WHO IS A GATEKEEPER?

A Gatekeeper is a **company that is in a position to control other companies' access to its digital platform services.**

Quantitative thresholds based on the global turnover and number of users of the Gatekeeper's services already **anticipate the designation of Microsoft, Google and Amazon.** European Commissioner Thierry Breton estimates that there are 14 Gatekeepers, which would be subject to 21 rules.

Furthermore, the notion of emerging Gatekeeper in the DMA allows for a qualitative approach in capturing companies that are in a strong but not yet sustainable competitive position. It aims to encourage these companies to be «DMA compatible» in advance of the phase. As said in the beginning, companies using platform services are called upon to guide and feed the Commission's investigation.

## WHAT PENALTIES?

Failure to comply with the rules will subject the gatekeeper to a fine of up to:

**10%**

of its worldwide turnover

**20%**

in the case of recidivism.

## WHICH PRACTICES ARE SANCTIONED? WHAT OBLIGATIONS AND PROHIBITIONS?

Generally speaking, the DMA aims to strengthen the legislative arsenal to force Gatekeepers to comply with existing regulations (in particular GDPR), to remove technical or commercial blockages and to ensure that customers have control over their data.

In its articles 5 and 6, the DMA provides in particular:

- a **prohibition on self-preference and tying practices;**
- an **obligation of interoperability** (notably between an operating system and applications);
- an **obligation of reversibility**, in particular technical reversibility for the end user;
- an **obligation to ensure the effective and free portability and reversibility of data to the end user or authorized third party.**

The European Commission will have to notify each Gatekeeper of the measures to be taken in order to comply with the DMA. **Again, the effectiveness of the measures will depend on the clarity of the feedback from the user companies regarding unfair practices.**