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COMMISSION IMPLEMENTING REGULATION (EU) .../...

of XXX

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

This draft has not been adopted or endorsed by the European Commission. Any views expressed are the preliminary views of the Commission services and may not in any circumstances be regarded as stating an official position of the Commission.

COMMISSION IMPLEMENTING REGULATION (EU) .../...

of **XXX**

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

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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)¹, and in particular Article 46(1) points (a), (d), (e), (f), (h), (i), (j), (k) and (m) thereof,

After inviting all interested parties to submit their comments,

After consulting the Digital Markets Advisory Committee,

Whereas:

- (1) Regulation (EU) 2022/1925 empowers the Commission to adopt implementing acts laying down detailed arrangements for the application of certain aspects of **the** said Regulation. In compliance with the principle of good administration and the principle of legal certainty, it is necessary to lay down rules concerning in particular notifications, requests, reports and other submissions of information, and the opening of proceedings under Regulation (EU) 2022/1925. It is also necessary to lay down rules concerning the exercise of the right to be heard and the right of access to file by the addressees of the Commission's preliminary findings.
- (2) In order to ensure fair and efficient **proceedings** as well as the effective and full enforcement of Regulation (EU) 2022/1925 and to provide legal certainty for all natural and legal persons concerned, it is important to lay down **inter alia** the framework for the provision of documents under Regulation (EU) 2022/1925. In particular, it is necessary to set out rules as regards the format and maximum length of documents, use of languages and the procedure for the transmission and receipt of documents. Furthermore, it is necessary to set out rules on the information **that needs to be included** by undertakings providing core platform services **in the notification to be submitted** pursuant to Article 3(3), first subparagraph, or **in a submission of information** following a Commission request **pursuant** to Article 3(3), second subparagraph, of Regulation (EU) 2022/1925. In the process of preparing a notification pursuant to Article 3(3) of Regulation (EU) 2022/1925 and Article 2 of this Regulation and within a reasonable timeframe before this notification, an undertaking providing core platform services **may** engage in pre-notification contacts with the Commission. In carrying out its tasks under Regulation (EU) 2022/1925, **for**

¹ OJ L 265, 12.10.2022, p. 1-66.

most matters the Commission will have to rely on the information provided by the undertakings concerned. Therefore, it is particularly important that the information is correct, complete and not misleading and is provided within the time limits, where applicable.

- (3) Regulation (EU) 2022/1925 requires a dedicated self-standing procedural framework taking into account its specificities, aiming to set out a rapid and effective investigatory and enforcement process, while also ensuring that the right to be heard of the parties to the proceedings is effectively protected. Clear rules on the exercise of the right to be heard should thus be laid down. The undertaking or association of undertakings to whom the Commission has notified its preliminary findings should have the right to provide its views in writing within a time-limit that should be set by the Commission with a view to reconciling the efficiency and effectiveness of the procedure, on the one hand, and the possibility to exercise the right to be heard, on the other. The addressee of the preliminary findings should have the right to set out succinctly the relevant facts and provide supporting evidence. While the addressee of the preliminary findings should always obtain from the Commission the non-confidential versions of all documents mentioned in the preliminary findings, the Commission should be able to decide on a case-by-case basis on the appropriate procedure for access to further information in the file.
- (4) When granting the undertakings or associations of undertakings concerned access to the file, the Commission should ensure the protection of business secrets and other confidential information. The Commission should be able to request undertakings or associations of undertakings that submit or have submitted documents, including statements, to identify business secrets or other confidential information. In order to ensure the effectiveness of the assessment of third parties' comments to publications or consultations pursuant to Articles 8(6), 18(5), 18(6), 19(2) and 29(4) of Regulation (EU) 2022/1925, it is necessary to provide that such comments are treated as non-confidential, while giving third parties the right to request the redaction of the author's and the sender's name or other identifying information before the comments are shared with the addressee of the preliminary findings or with any other third party.
- (5) The Commission should, before making this information available to the addressee of its preliminary findings, assess for each individual document whether, with view to an effective exercise of the right to be heard, the need to disclose is greater than the harm to the third party which might result from disclosure.
- (6) In the interest of legal certainty, whereas Council Regulation (EEC, Euratom) 1182/71² is to apply in general, rules on time limits under Regulation (EU) 2022/1925 should be specifically laid down to the extent necessary.

HAS ADOPTED THIS REGULATION:

Chapter I

Scope

Article 1

Subject matter and scope

This Regulation lays down:

- (1) detailed arrangements in respect of the form, content and other details of notifications and submissions pursuant to Article 3, of reasoned requests pursuant to Articles 8(3), 9 and 10, of regulatory reports pursuant to Article 11, of notifications and submissions made pursuant to Articles 14 and 15 of Regulation (EU) 2022/1925;
- (2) the practical arrangements of the proceedings pursuant to Article 29 of Regulation (EU) 2022/1925;
- (3) the practical arrangements for exercising rights to be heard and for the terms of disclosure provided for in Article 34 of Regulation (EU) 2022/1925;
- (4) the practical arrangements regarding time limits.

Chapter II

Notifications, requests and other submissions

Article 2

Notifications and submissions of information following Commission requests

- (1) Notifications pursuant to Article 3(3), first subparagraph, of Regulation (EU) 2022/1925 shall contain all the information, including documents, requested in the form set out in Annex I to this Regulation. All the information concerning the thresholds set out in Article 3(2) of Regulation (EU) 2022/1925 shall be presented in the body of that form, without prejudice to the possibility to supplement this information by attaching annexes.
- (2) Submissions of information following a Commission request for information pursuant to Article 3(3), second subparagraph, of Regulation (EU) 2022/1925 shall contain all the information, including documents, set out in the Commission's request. The Commission may specify, in its request for information, which of the sections of the form set out in Annex I to this Regulation shall be completed.

- (3) If, in accordance with Article 3(5) of Regulation (EU) 2022/1925, the notifying undertaking wishes to submit, with its notification, sufficiently substantiated arguments to demonstrate that, exceptionally, although it meets all the thresholds in Article 3(2) of that Regulation, due to the circumstances in which the relevant core platform service operates, it does not satisfy the requirements of Article 3(1) of that Regulation, it shall provide such arguments in annex to its notification. A separate annex shall be submitted for each distinct core platform service for which the notifying undertaking wishes to provide substantiated arguments. The notifying undertaking shall also clearly identify to which of the three cumulative requirements set out in Article 3(1) of Regulation (EU) 2022/1925 its arguments relate and, for each argument, it shall explain why the relevant core platform service exceptionally does not satisfy this requirement, although it meets the corresponding threshold in Article 3(2) of that Regulation.
- (4) The information submitted to the Commission pursuant to paragraphs 1 to 3 shall be correct, complete and not misleading. It shall be presented in a clear, well-structured and intelligible manner.
- (5) Where the notifying undertaking requests that any piece of information supplied should not be published or otherwise disclosed to other parties, it shall submit this information separately, each page being clearly marked 'Business Secrets', and provide reasons.
- (6) Notifications and submissions referred to in paragraphs 1 to 3 shall be drafted in one of the official languages of the Union. The language of the procedure shall be the language of the notification referred to in paragraph 1 or, in the absence thereof, of the submission of information referred to in paragraph 2, unless the Commission and the undertaking concerned agree otherwise. Supporting documents shall be submitted in their original language and, where their original language is not one of the official languages of the Union, they shall be accompanied by a faithful translation into the language of the procedure.
- (7) The notifications and submissions referred to in paragraphs 1 to 3 shall be accompanied by written proof that the persons submitting them are authorised to act on behalf of the undertaking concerned.
- (8) The Commission may, upon reasoned request, exempt an undertaking from the obligation to provide specific documents or pieces of information required for the notification referred to in paragraph 1, where the Commission considers that compliance with those obligations is not necessary for its assessment of the notification pursuant to Article 3(4) of Regulation (EU) 2022/1925.
- (9) The Commission shall, without delay, acknowledge in writing to the undertaking concerned or its representatives receipt of its notifications or submissions referred to in paragraphs 1 to 3.

Article 3

Effective date of notifications and submissions of information

- (1) Where the information contained in a notification or submission of information referred to in Article 2(1) to (3) of this Regulation is incomplete in any material respect, the Commission shall inform the undertaking concerned or its representatives in writing without delay. In such a case, the notification or submission of information shall become effective on the date on which the complete information is received by the Commission.
- (2) If a notification or submission of information referred to in Article 2(1) to (3) covers more than one core platform service, the Commission may specify that the information contained in the notification or submission of information is incomplete only in relation to one or more of those core platform services. In such a case, with respect to these core platform services only, the notification or the submission of information shall become effective on the date on which the complete information is received by the Commission.
- (3) The notifying undertaking shall communicate without delay to the Commission the following: (i) any material change in the facts presented in a notification, submission of information or of substantiated arguments referred to in Article 2(1) to (3), coming to light subsequently to the relevant notification or submission, which the undertaking knows or ought to know, and (ii) any new information coming to light subsequently to its notification or submission, which the undertaking knows or ought to know and which would have had to be submitted if known at the time of its notification, or submission.
- (4) The Commission shall inform the undertaking concerned of the receipt of the communication concerning the material changes or new information pursuant to paragraph 3 in writing and without delay. Where such changes or information could have a significant effect on the Commission's assessment of the notification, submission of information or of substantiated arguments referred to in Article 2(1) to (3), the notification or submission shall be deemed to be effective on the date on which the relevant information is received by the Commission. The Commission shall inform the undertaking thereof.
- (5) For the purposes of this Article, partly or totally incorrect or misleading information shall be considered to constitute incomplete information.

Article 4

Format and length of documents

Documents submitted to the Commission under Regulation (EU) 2022/1925 shall comply with the format and page limits set out in Annex II to this Regulation. The Commission may, upon reasoned request, authorise an undertaking or association of undertakings to exceed those page limits where and to the extent that the undertaking or association of undertakings substantiates that it is objectively impossible to deal with particularly complex legal or factual issues within the relevant page limits.

Chapter III

Opening of proceedings

Article 5

Opening of proceedings

- (1) The Commission may decide to open proceedings with a view to adopting a decision pursuant to Article 29 of Regulation (EU) 2022/1925 at any point in time, but no later than the date on which it issues the preliminary findings pursuant to Article 29(3) of that Regulation.
- (2) The Commission shall make public the opening of proceedings.

Chapter IV

Right to be heard and access to the file

Article 6

Observations on preliminary findings

The addressee of preliminary findings pursuant to Article 34(1) of Regulation (EU) 2022/1925 may, within the time-limit set by the Commission pursuant to Article 34(2) of that Regulation, succinctly inform the Commission of its views in writing and submit evidence in support thereof. The Commission is not obliged to take account of written submissions received after the expiry of that time-limit.

Article 7

Identification and protection of confidential information

- (1) Unless otherwise provided for in Article 34(4) of Regulation (EU) 2022/1925 or Article 9 and without prejudice to paragraph 5, information or documents collected or obtained by the Commission shall not be disclosed or made accessible by the Commission in so far as they contain business secrets or other confidential information of any natural or legal person.
- (2) The Commission may require undertakings or associations of undertakings which submit documents or statements to identify the documents or parts of documents submitted to it which they consider to contain business secrets or other confidential information. The Commission may also require undertakings or associations of

undertakings to identify any part of a Commission decision which in their view contains business secrets or other confidential information.

- (3) The Commission may set a time-limit for undertakings or associations of undertakings to:
 - (a) substantiate in a specific manner their claims for business secrets and other confidential information for each individual document or part thereof;
 - (b) provide the Commission with a non-confidential version of the documents in which the business secrets and other confidential information are redacted in a clear and intelligible manner;
 - (c) provide a concise, non-confidential and clear description of each piece of redacted information.
- (4) If undertakings or associations of undertakings fail to comply with a request by the Commission pursuant to paragraphs 2 or 3, the Commission may consider that the documents or statements concerned do not contain business secrets or other confidential information.
- (5) Unless otherwise indicated by the Commission, any comments by third parties to publications or consultations pursuant to Articles 8(6), 18(5), 18(6), 19(2) and 29(4) of Regulation (EU) 2022/1925 shall be treated as non-confidential. Interested third parties submitting comments shall have the right to request the redaction of the author's and the sender's name or other identifying information before the comments are shared with the addressee of the preliminary findings or with any other third party. The Commission may make those comments, or any non-confidential version thereof, publicly available, provided it has indicated this possibility in the context of the publication or consultation.

Article 8

Access to the file

- (1) Upon request, the Commission shall grant access to the file to the addressee of the preliminary findings pursuant to Article 34(1) of Regulation (EU) 2022/1925 to the extent that it is necessary to enable it to exercise its right to be heard. Access to the file shall not be granted before the notification of the preliminary findings.
- (2) If the addressee of the preliminary findings requests access to the file pursuant to paragraph 1, the Commission shall provide it with a non-confidential version of at least all documents mentioned in the preliminary findings as well as a list of all documents in the Commission's file.
- (3) The addressee of the preliminary findings may, on the basis of the list referred to in paragraph 2, request to the Commission access to documents in the Commission's file that have not been provided to it under paragraph 2 or to redacted parts of the documents provided to it under paragraph 2. It shall duly substantiate why access to a specific document or part thereof is necessary to exercise its right to be heard.

- (4) Where the addressee of the preliminary findings requests access pursuant to paragraph 3 to documents that have not been identified as containing any business secrets or other confidential information by the party from whom the documents originate (“document originator”), the Commission shall provide those documents to the addressee of the preliminary findings.
- (5) Where the addressee of the preliminary findings requests access pursuant to paragraph 3 to documents that have in their entirety or in part been identified by the document originator as containing business secrets or other confidential information, such access shall take place according to the modalities and within the time limit set out in a Commission decision, if appropriate on the basis of standard terms of disclosure that may be published by the Commission. Those modalities may relate inter alia to the disclosure by the document originator to the addressee of the preliminary findings (the “parties”), under the terms set by the Commission, of documents or parts thereof to be identified through bilateral negotiations between the parties. The Commission in its decision may, in particular:
- (a) identify the categories and number of employees or external advisors of the addressee of the preliminary findings who may have access to the documents concerned;
 - (b) provide for limitations to the use of the documents, including that the addressee of the preliminary findings shall treat such documents with utmost respect to the business secrets or confidentiality of the information therein and that such information shall not be used to the detriment of the document originator or the objectives of Regulation (EU) 2022/1925;
 - (c) provide the identity and contact details of the document originators, unless the Commission considers, upon their request, that their identities shall remain confidential.
- (6) Where access to the file is given under paragraph 5, in case of disagreement between the parties on the extent of the disclosure of one or more documents or parts thereof, the addressee of the preliminary findings shall inform the Commission of the details of that disagreement within the time limit referred to in paragraph 5. In such a case, access to the documents or parts of documents concerned shall be granted to the addressee of the preliminary findings within the time limit and on the basis of terms of disclosure set out in a Commission decision. Those terms shall provide for appropriate safeguards to ensure the protection of business secrets and other confidential information. The Commission may publish on its website the terms that it intends to use as a model.
- (7) Before the expiry of the time limit set in the Commission decision pursuant to paragraph 6, the document originator may exceptionally request the Commission that specific information be withheld from disclosure by demonstrating that, despite the safeguards, such disclosure would risk to disproportionately harm its interests of confidentiality and that even a partial disclosure would carry the same risk. In assessing such request, the Commission shall balance the effective exercise of the rights to be heard by the addressee of the preliminary findings with the legitimate interests of confidentiality of the document originator and shall refuse the request

only when the information concerned is absolutely indispensable for the exercise of the right to be heard by the addressee of the preliminary findings.

- (8) Documents obtained through access to the file provided pursuant to this Article shall only be used for the purposes of the relevant proceedings within which access to those documents was given or of judicial or administrative proceedings related to those proceedings.
- (9) At any time during the procedure, the Commission may determine that it shall give access to a non-confidential version of a requested document in order to avoid a disproportionate delay or administrative burden.

Chapter V

Time limits

Article 9

Beginning of time periods

- (1) Without prejudice to paragraph 2, the time limits provided for in or fixed by the Commission pursuant to Regulation (EU) 2022/1925 or to this Regulation shall be calculated according to Regulation (EEC, Euratom) No 1182/71.
- (2) By way of derogation to paragraph 1, time periods shall begin running on the working day following the event to which the relevant provision of Regulation (EU) 2022/1925 or this Regulation refers.

Article 10

Setting of time limits

- (1) In setting the time-limits under Regulation (EU) 2022/1925 or this Regulation, the Commission shall have due regard to all relevant elements of facts and law and all the interests concerned, in particular the possibility for individuals to exercise their right of defence and the expediency of the proceedings.
- (2) Where appropriate and upon reasoned request by the undertakings or associations of undertakings concerned made before the expiry of the time-limit set by the Commission pursuant to this Regulation, time-limits may be extended. In deciding whether to grant such extension, the Commission shall assess whether the reasoned request is sufficiently substantiated and whether the requested extension is liable to endanger the compliance with the applicable procedural time limits laid down in Regulation (EU) 2022/1925.

Chapter V

General and final provisions

Article 11

Transmission and receipt of the documents

- (1) Transmission of documents to and from the Commission pursuant to Regulation (EU) 2022/1925 and this Regulation shall take place by digital means. Technical specifications regarding the means of transmission and signature may be published and regularly updated by the Commission.
- (2) Documents transmitted by digital means must be signed using at least one Qualified Electronic Signature complying with the requirements set out in Regulation (EU) No 910/2014³.
- (3) Documents transmitted to the Commission by digital means shall be deemed to have been received by the Commission on the day when an acknowledgement of receipt has been sent.
- (4) A document transmitted to the Commission by digital means shall be deemed not to have been received if one of the following circumstances occurred:
 - (a) The document or parts thereof is inoperable or unusable;
 - (b) The document contains viruses, malware or other threats;
 - (c) The document contains an electronic signature the validity of which cannot be verified by the Commission.
- (5) The Commission shall inform the sender without delay if one of the circumstances referred to in paragraph 4 occurs and give it the possibility to express its views within a reasonable time limit.
- (6) By way of derogation from paragraph 1, under exceptional circumstances which make transmission by digital means impossible or extremely difficult, documents may be transmitted to the Commission by registered mail. Those documents shall be deemed to have been received by the Commission on the day of their delivery at the address of the responsible Commission service as published by the Commission on its website.
- (7) By way of derogation from paragraph 1, under exceptional circumstances which make transmission by digital means and registered mail impossible or extremely difficult, documents may be transmitted to the Commission by means of hand delivery. Those documents shall be deemed to have been received on the day of their delivery at the address referred to in paragraph 6. The delivery shall be confirmed in an acknowledgement of receipt by the Commission.

Article 12

Entry into force

This Regulation shall enter into force on 2 May 2023.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Commission

The President

[...]

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