

Digital Markets Act (2 March 2022)

Subject	EC proposed text	Council, 1 March 2022	Parliament	ICCL's suggested amendments	Justification
1. Conditions of data combination	<p>Article 5(1)a</p> <p>refrain from combining personal data sourced from these core platform services with personal data from any other services offered by the gatekeeper or with personal data from third-party services, and from signing 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 provided consent in the sense of Regulation (EU) 2016/679;</p>	<p>Article 5(1)a</p> <p>not combine personal data sourced from any of these core platform services with personal data from any further core platform service or further services offered by the gatekeeper or with personal data from third-party services, and not 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 provided consent in the sense of Article 6(1) point (a) of Regulation (EU) 2016/679. The gatekeeper may also rely on the legal basis included under Article 6(1) points (c), (d) and (e) of Regulation (EU) 2016/679, where applicable;</p>	<p>Article 5(1)a</p> <p>refrain from combining and cross-using personal data sourced from these core platform services with personal data from any other services offered by the gatekeeper or with personal data from third-party services, and from signing 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 in a explicit and clear manner, and has provided consent in the sense of Regulation (EU) 2016/679;</p>	<p>Article 5(1)a</p> <p>refrain from combining and cross-using personal data sourced from these core platform services with personal data from any other services offered by the gatekeeper or with personal data from third-party services, and from signing 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 for each processing purpose, in line with the requirements under Article 4(11), Article 6(1) point (a), and Article 7 of Regulation (EU) 2016/679.</p>	<p>A flaw in Article 5(1)a would have the opposite effect to the Commission's intended limiting of gatekeeper data combining. The Commission and Council's use of "the specific choice" in the singular creates an ambiguity, or may entirely negate, the GDPR "purpose limitation" principle (GDPR, Article 5(1)b).</p> <p>Gatekeepers must not be allowed to exploit this ambiguity and claim they can combine data with a single OK.</p> <p>Adding the language of "processing purposes" makes it clear that the Commission can directly supervise and act against infringement, under Article 10 and Article 11.</p>
				<p>Article 5(1)(aa) NEW</p> <p>In the event that the end user has been presented with the choice of giving consent to the combination of data for any processing purpose and has not provided consent, or has withdrawn consent, or the end user's terminal equipment signals his or her objection to the processing of personal data pursuant to Article 21(5) of Regulation (EU) 2016/679,</p>	<p>Optional -- We propose the addition of Article 5(1)aa to avoid people being harassed by unending consent prompts.</p>

				the gatekeeper shall not prompt again a consent request and shall not exclude access to the services nor offer different or degraded services compared to the services offered to a business user or end user that provided consent.	
2. Combination of data for advertising			Article 6(1)(aa) NEW for its own commercial purposes, and the placement of third-party advertising in its own services, refrain from combining personal data for the purpose of delivering targeted or micro-targeted advertising, except if a clear, explicit, renewed, informed consent has been given to the gatekeeper in line with the procedure foreseen in the Regulation (EU) 2016/679 by an end-user that is not a minor.	[Deleted]	IMCO's amendment would allow gatekeepers to lawfully combine any data for any processing purposes related to advertising, after a single consent is given. This would accidentally negate an essential principle of the fundamental right to data protection, GDPR (the "purpose limitation principle" in Article 5(1)b, GDPR). It would also allow gatekeepers to increase their market dominance, which will harm publishers and media plurality, and prevent the emergence of superior and better rights-respecting competitors.