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

of 14.4.2023

**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**

(Text with EEA relevance)

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

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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

(Text with EEA relevance)

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 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, including determination of effective dates for notifications and 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 a fair and efficient procedure 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 among others 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, the use of languages and the procedure for the transmission and receipt of documents. Furthermore, it is necessary to set out rules on the information to be included by undertakings providing core platform services in notifications submitted pursuant to Article 3(3), first subparagraph, or submissions of information following a Commission request referred to in 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

¹ OJ L 265, 12.10.2022, p. 1-66.

should be able to engage in pre-notification contacts with the Commission in view of ensuring an effective notification procedure pursuant to Article 3(3) of Regulation (EU) 2022/1925. In carrying out its tasks under Regulation (EU) 2022/1925, the Commission will mainly 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 procedural framework taking into account the specificities of that Regulation. That framework should aim to set out a rapid and effective investigatory and enforcement process, while ensuring that the right to be heard of the parties to the proceedings is effectively protected. Clear and proportionate rules on the exercise of the right to be heard, including access to the file of the Commission, 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 documents. While the addressee of the preliminary findings should always have the right to obtain from the Commission the non-confidential versions of all documents mentioned in the preliminary findings, it should additionally be provided with access to all documents on the Commission's file, without any redactions, under terms to be set out in a Commission decision. This access should be limited in certain situations, including when the disclosure of certain documents would harm the party that submitted them or where other interests prevail.
- (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 in a proportionate manner. 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 Article 8(6), Article 18(5) and (6), and Articles 19(2) and 29(4) of Regulation (EU) 2022/1925, such comments should be treated as non-confidential for the purpose of granting access to file and of preparing Commission decisions, 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 documents available to the addressee of its preliminary findings, assess whether, with a 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, the time limits under Regulation (EU) 2022/1925 and this Regulation, including the time limits set by the Commission pursuant to those Regulations, should be governed by Council Regulation (EEC, Euratom) No 1182/71².

² Regulation (EEC, Euratom) No 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time limits (OJ L 124, 8.6.1971, p. 1).

However, specific rules regarding time limits should be laid down to the extent necessary.

HAS ADOPTED THIS REGULATION:

Chapter I

Scope

Article 1

Subject matter and scope

This Regulation lays down detailed arrangements in relation to:

1. the form, content and other details of notifications and submissions pursuant to Article 3, of reasoned requests pursuant to Article 8(3), Article 9 and Article 10, of regulatory reports pursuant to Article 11, and of notifications and submissions pursuant to Articles 14 and 15 of Regulation (EU) 2022/1925;
2. proceedings pursuant to Article 29 of Regulation (EU) 2022/1925;
3. the exercise of the right to be heard and the terms of disclosure provided for in Article 34 of Regulation (EU) 2022/1925;
4. 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, indicated in the form set out in Annex I to this Regulation.
2. Submissions of information following a Commission request for information referred to in 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 an 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 that requirement despite the fact that it meets the corresponding threshold laid down in Article 3(2) of that Regulation.

4. The information submitted to the Commission pursuant to paragraphs 1, 2 and 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 any piece of information supplied not to be published or otherwise disclosed to other parties, it shall submit that piece of information in a separate document, with each page being clearly marked 'Business Secrets', and provide reasons.
6. Notifications and submissions referred to in paragraphs 1, 2 and 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. Any annexes attached pursuant to paragraph 1 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, 2 and 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 undue delay, acknowledge in writing to the undertaking concerned or its representatives receipt of notifications or submissions referred to in paragraphs 1, 2 and 3.

Article 3

Effective date of notifications and submissions of information

1. Where the information contained in a notification or in a submission of information or of substantiated arguments referred to in Article 2(1), (2) and (3) of this Regulation is incomplete in any material respect, the Commission shall inform the undertaking concerned or its representatives in writing without undue delay. In such a case, the notification or submission shall become effective on the date on which the complete information is received by the Commission or on the date on which the Commission informs the undertaking concerned that, in light of the relevant circumstances, the information requested is no longer necessary.
2. If a notification, or a submission of information or of substantiated arguments referred to in Article 2(1), (2) and (3) covers two or more core platform services, the Commission may specify that the information contained in the notification or submission 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 shall become effective on the date on which the complete information is received by the Commission or on the date on which the Commission informs the undertaking concerned that, in light of the relevant circumstances, the information requested is no longer necessary.

3. While a notification is under review, the notifying undertaking shall communicate the following to the Commission, without undue delay.
 - (a) any material changes in the facts presented in the notification or submission of information or of substantiated arguments referred to in Article 2(1), (2) or (3) coming to light subsequently to the relevant notification or submission, which the undertaking knows or ought to know;
 - (b) any new information coming to light subsequent to the 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 undue delay. Where such changes or information could have a significant effect on the Commission's assessment of the notification, of the submission of information or of substantiated arguments referred to in Article 2(1), (2) or (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

1. 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.
2. 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 or exceedingly difficult to deal with particularly complex legal or factual issues within the relevant page limits.
3. Where a document submitted by an undertaking or an association of undertakings pursuant to this Regulation or to Regulation (EU) 2022/1925 does not comply with paragraphs 1 and 2, the Commission may request the undertaking or association of undertakings to put the document in order.

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 and in accordance with the format and length requirements for documents set out in Annex II to this Regulation, inform the Commission of its views in writing and submit evidence in support thereof. The Commission shall not be 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 Regulation (EU) 2022/1925 or Article 8 of this Regulation and without prejudice to paragraph 6 of this Article, 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. When requesting information pursuant to Article 21 of Regulation (EU) 2022/1925 or, carrying out interviews pursuant to Article 22 of Regulation (EU) 2022/1925, the Commission shall inform the relevant natural or legal persons that, by providing information to the Commission, they agree that access to that information may be granted pursuant to Article 8 of this Regulation. In any event, the provisions of Article 8 shall apply to any document spontaneously submitted to the Commission under Regulation (EU) 2022/1925 or this Regulation.
3. Without prejudice to paragraph 2, the Commission may require natural or legal persons who are the originators of documents in its file to identify the documents, statements or parts thereof which they consider to contain business secrets or other confidential information. The Commission may also set a time-limit for natural or legal persons to identify any part of a Commission decision which in their view contains business secrets or other confidential information.
4. The Commission may set a time-limit for natural or legal persons to:
 - (a) substantiate in a specific manner their claims for business secrets and other confidential information for each individual document, statement or part thereof;
 - (b) provide the Commission with a non-confidential version of the documents or statements 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.
5. If natural or legal persons fail to comply within the time-limit set by the Commission with a request pursuant to paragraph 3 or 4, the Commission may consider that the documents or statements concerned do not contain business secrets or other confidential information.

6. If the Commission determines that certain information that is claimed confidential by a natural or legal person may be disclosed, either because this information does not constitute a business secret or other confidential information, or because there is an overriding interest in its disclosure, it shall inform the natural or legal person concerned that it intends to disclose such information unless it receives objections within one week. Should the natural or legal person in question object, the Commission may adopt a reasoned decision specifying the date after which the information will be disclosed. This date shall not be less than one week from the date of notification. The decision shall be notified to the natural or legal person concerned.
7. Unless otherwise indicated by the Commission, any comments by third parties on a publication or consultation pursuant to Article 8(6), Article 18(5) and (6), Article 19(2) and Article 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 undertaking or association of undertakings to which it has addressed preliminary findings pursuant to Article 34(1) of Regulation (EU) 2022/1925 (the “addressee”). Access to the file shall not be granted before the notification of the preliminary findings.
2. When providing access to the file, the Commission shall provide the addressee with all documents mentioned in the preliminary findings, subject to redactions that have been made pursuant to Article 7(3) in order to protect business secrets or other confidential information.
3. Without prejudice to paragraph 4, the Commission shall also provide access to all documents on its file, without any redactions, under terms of disclosure to be set out in a Commission decision. The terms of disclosure shall be determined in accordance with the following:
 - (a) Access to documents shall only be granted to a limited number of specified external legal and economic counsel and external technical experts engaged by the addressee and whose names shall be communicated to the Commission in advance.
 - (b) The specified external legal and economic counsel and external technical experts shall be undertakings, employees of undertakings or in a situation comparable to that of employees of undertakings. All of them shall be bound by the terms of disclosure.
 - (c) Persons listed as specified external legal and economic counsel and external technical experts shall not, at the date of the Commission decision setting out the terms of disclosure, be in an employment relationship with the addressee or in a situation comparable to that of an employee of the addressee. Should the specified external legal or economic counsel or external technical experts subsequently enter into such a relationship with the addressee or with other

undertakings active on the same markets as the addressee during the investigation or during the three years following the end of the Commission's investigation, the specified external legal or economic counsel or external technical expert and the addressee shall promptly inform the Commission about the terms of such relationship. The specified external legal or economic counsel or external technical expert in question shall also provide the Commission with an assurance that they no longer have access to the information or documents on the file to which they were given access according to point (a) and which were not made available to the addressee by the Commission. They shall also provide assurances to the Commission that they will continue to comply with the requirements referred to in point (d) of this paragraph.

- (d) Specified external legal and economic counsel and external technical experts shall not disclose any of the documents provided or their content to any natural or legal person that is not bound by the terms of disclosure and shall not use any of the documents provided or their content other than for the purposes referred to in Article 8(8) below.
 - (e) The Commission shall specify, in the terms of disclosure, the technical means of the disclosure and its duration. Disclosure may be made by electronic means or (for some or all documents) physically at the Commission's premises.
4. In exceptional circumstances the Commission may decide not to grant access to certain documents or to grant access to partly redacted documents under the terms of disclosure referred to in paragraph 3 if it determines that the harm that the party that submitted the documents in question would likely suffer from disclosure under those terms would, on balance, outweigh the importance of the disclosure of the full document for the exercise of the right to be heard. Without prejudice to Article 34(4), fourth and fifth sentences, of Regulation (EU) 2022/1925, the Commission may for the same reason decide not to disclose or partly disclose correspondence between the Commission and public authorities of the Member States or of third countries and other types of sensitive documents.
 5. The specified external legal and economic counsel and external technical experts referred to in paragraph 3 may, within one week of receiving access to the file under the terms of disclosure, make a reasoned request to the Commission for access to a non-confidential version of any document on the Commission's file not already provided to the addressee under paragraph 2, with a view to making such non-confidential version available to the addressee, or for an extension of the terms of disclosure to additional specified external legal and economic counsel or external technical experts. Such additional access or extension may only be granted exceptionally and provided that it is shown to be indispensable for the proper exercise of the addressee's right to be heard.
 6. For the purposes of applying paragraph 4 or 5, the Commission may request the party that submitted the documents in question to provide a non-confidential version thereof pursuant to Article 7(3) and (4).
 7. Where the Commission considers a request under paragraph 5 to be well-founded in view of the need to ensure that the addressee is in a position to exercise its right to be heard effectively, the Commission shall request the party that submitted the documents in question either to agree to making a non-confidential version available to the addressee or to agree to the extension of the terms of disclosure to specified

individuals or undertakings for the documents in question only. In the event that the party that submitted the documents in question does not agree, the Commission shall adopt a decision setting out the terms of disclosure for the documents in question.

8. Documents obtained through access to the file 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 administrative or judicial proceedings concerning the application of Regulation (EU) 2022/1925 that are related to those proceedings.
9. At any time during the procedure, the Commission may instead of or in combination with the method of granting access to the file pursuant to paragraph 3 above, give access to some or all documents redacted pursuant to Article 7(3) 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 under Regulation (EU) 2022/1925 and this Regulation shall be calculated in accordance with Regulation (EEC, Euratom) No 1182/71.
2. By way of derogation from 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.
3. Where a document does not comply with the requirements regarding format and length laid down in Annex II to this Regulation, time periods shall not start running until the document is put in order in accordance with a request by the Commission pursuant to Article 4(3)

Article 10

Setting of time limits

1. Where the Commission sets a time-limit under Regulation (EU) 2022/1925 or this Regulation, it shall have due regard to all relevant elements of fact and law and all the interests concerned, in particular the possibility for individuals to exercise their right to be heard and the expediency of the proceedings.
2. Where appropriate and upon reasoned request by the undertakings or associations of undertakings concerned before the expiry of the time-limit set by the Commission pursuant to Regulation (EU) 2022/1925 or this Regulation, a time-limit 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 compliance with the applicable procedural time limits laid down in Regulation (EU) 2022/1925.

Chapter VI

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 shall be signed using at least one Qualified Electronic Signature complying with the requirements set out in Regulation (EU) No 910/2014 of the European Parliament and of the Council.³
3. Documents transmitted to the Commission by digital means shall be deemed to have been received on the day on which an acknowledgement of receipt is sent by the Commission.
4. A document transmitted to the Commission by digital means shall be deemed not to have been received if one of the following circumstances occurs:
 - (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 undue delay if one of the circumstances referred to in paragraph 4 occurs and give it the possibility to express its views and rectify the situation within a reasonable time limit.
6. By way of derogation from paragraph 1, under exceptional circumstances which make transmission by digital means impossible or exceedingly 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 exceedingly 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 of the responsible Commission service as published by the Commission on its website. The delivery shall be confirmed in an acknowledgement of receipt by the Commission.

³ Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (OJ L 257, 28.8.2014, p. 73).

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, 14.4.2023

For the Commission
The President
Ursula VON DER LEYEN