



Brussels, 23.3.2023
C(2023) 1833 final

COMMISSION DECISION

of 23.3.2023

on setting up the High-Level Group for the Digital Markets Act

COMMISSION DECISION

of 23.3.2023

on setting up the High-Level Group for the Digital Markets Act

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 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 40 thereof,

Whereas:

- (1) Regulation (EU) 2022/1925 lays down harmonised rules ensuring, for all businesses, contestable and fair markets in the digital sector across the Union where gatekeepers are present, to the benefit of business users and end users.
- (2) In order to ensure coherent and effective implementation of Regulation (EU) 2022/1925 and of other sectoral regulations applicable to gatekeepers, the Commission should be able to draw on the expertise and experience in identifying and assessing the current and potential interactions between the provisions of Regulation (EU) 2022/1925 and sector-specific rules relevant for the general implementation and enforcement of that Regulation.
- (3) In order to ensure that markets in the digital sector across the Union are contestable and fair, it is important that the Commission can, in its market investigations into new services and new practices, draw on available expertise and experience of the relevant sectoral bodies and networks in identifying future needs.
- (4) Regulation (EU) 2022/1925 therefore entrusts the Commission with the task of establishing the high-level group that should be composed of the European bodies and networks identified in that Regulation. Such composition of the group should allow the Commission to benefit from its high-level expertise and experience when implementing Regulation (EU) 2022/1925.
- (5) It is therefore necessary to set up the high-level group for the purposes of Regulation (EU) 2022/1925 as a group of experts and to define its tasks and functioning, in compliance with Commission Decision C(2016) 3301 final² establishing horizontal rules on the creation and operation of Commission expert groups.
- (6) Pursuant to Regulation (EU) 2022/1925, such high-level group is to be composed of the following European bodies and networks: Body of the European Regulators for Electronic Communications, European Data Protection Supervisor ('EDPS') and European Data Protection Board ('EDPB'), European Competition Network,

¹ OJ L 265/1, 22/10/2022, p. 1.

² Commission Decision C(2016) 3301 final establishing horizontal rules on the creation and operation of Commission expert groups.

Consumer Protection Cooperation Network, and European Regulatory Group of Audiovisual Media Regulators.

- (7) Pursuant to Article 40(3) of Regulation (EU) 2022/1925, the above-mentioned European bodies and networks shall each have an equal number of representatives in the high-level group, and the maximum number of members of the high-level group shall not exceed 30. The EDPS and EDPB are referred to in Article 40(2)(b) of Regulation (EU) 2022/1925 as one member. The designation of representatives from those two bodies should take into account their distinctive functions, in particular their experience in the application and enforcement of Regulation (EU) 2016/679 of the European Parliament and of the Council³. Therefore, the EDPB should nominate five representatives, while the EDPS should nominate one representative.
- (8) Rules on disclosure of information by members of the high-level group should be laid down.
- (9) Personal data should be processed in accordance with Regulation (EU) No 2018/1725 of the European Parliament and of the Council⁴,

HAS DECIDED AS FOLLOWS:

Article 1

Subject matter

A high-level group for the Digital Markets Act (the ‘group’), is hereby established.

Article 2

Tasks

1. The group is entrusted with the task of providing the Commission, upon its request, with advice and expertise in the areas falling within the competences of its members, including:
 - (a) advice and recommendations within their expertise on any general matter of implementation or enforcement of Regulation (EU) 2022/1925;
 - (b) advice and expertise promoting a consistent regulatory approach across different regulatory instruments;
 - (c) expertise in the context of market investigations into new services and new practices on the need to amend, add or remove rules in Regulation (EU) 2022/1925, in order to ensure that digital markets across the Union are contestable and fair;

³ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

⁴ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39)

- (d) expertise on the current and potential interactions between Regulation (EU) 2022/1925 and the sector-specific rules applied by the national authorities composing the European bodies and networks referred to in Article 4 and submitting an annual report to the Commission presenting such assessment and identifying potential trans-regulatory issues. Such report may be accompanied by recommendations converging towards consistent transdisciplinary approaches and synergies between the implementation of Regulation (EU) 2022/1925 and sector-specific rules relevant for the general implementation and enforcement of that Regulation. The report shall be communicated to the European Parliament and to the Council.
2. The group shall not be involved in, or otherwise provide advice on, ongoing proceedings or investigations conducted by the Commission under Regulation (EU) 2022/1925, which is the sole prerogative of the Commission as enforcer of that Regulation, subject to the Advisory Committee procedure as laid down in Article 50(2) of Regulation (EU) 2022/1925.

Article 3

Membership

1. The European bodies and networks referred to in Article 40(2) of Regulation (EU) 2022/1925 shall each nominate six representatives who hold a position as head of the national authorities of the Member States that compose the European body or network, or equivalent. The European Data Protection Supervisor shall nominate one representative and the European Data Protection Board shall nominate five representatives. The representatives shall be appointed for a period of two years, renewable once.

Where appropriate, in particular where the mandate of the appointed representative within the national authorities or European body or network comes to end within the two year period referred to in paragraph 1, the member concerned shall nominate a new representative for the remainder of the term. Members may delegate appropriate alternate representatives who shall replace permanent representatives who are absent or indisposed.

2. Members shall be responsible for ensuring that their representatives provide a high level of expertise within the area of their competence. Each member should aim to ensure a broad geographical balance among its representatives. Each member shall define its own rules of representation in the high level group and internal procedures for reporting back to the relevant body or network.

Where a national authority is a member of several bodies of networks, members of that authority may only represent one of those bodies or networks at a time.

Article 4

Chair

1. The group shall be chaired by the Commission's Directors-General of the Directorate-General for Communications Networks, Content and Technology and the Directorate-General for Competition ('the responsible Directorates-General').

2. The Directors-General of the responsible Directorates-General may delegate other Commission officials to chair the group.

Article 5

Operation

1. The group shall act at the request of the responsible Directorates-General of the Commission, in compliance with the Commission's horizontal rules on expert groups ('the horizontal rules')⁵.
2. Upon request of the Commission, the group shall normally meet at least once per calendar year. The Commission shall also convene a meeting of the group when so requested by the majority of the members composing the group in order to address a specific issue. Furthermore, the group may be convened by the Commission for additional *ad-hoc* meetings, including when urgent advice is needed.
3. Meetings of the group may be held on Commission premises or virtually, depending on the circumstances.
4. The Commission shall provide secretarial services to the group.
5. Commission officials from other departments with an interest in the proceedings may be invited to attend meetings of the group or its sub-groups.
6. In agreement with the Commission, the group may, by simple majority of its members, decide that deliberations shall be public
7. Minutes of the discussion on each point on the agenda and on the opinions delivered by the group shall be meaningful and complete. Minutes shall be drafted by the Commission services under the responsibility of the Chairs.
8. As far as possible, the group shall adopt its opinions, recommendations or reports by consensus. In the event of a vote, the outcome of the vote shall be decided by simple majority of the members. Members who have voted against or abstained shall have the right to have a document summarising the reasons for their position annexed to the opinions, recommendations or reports.

Article 6

Sub-groups

1. The Commission may set up sub-groups for the purpose of examining specific questions on the basis of terms of reference defined by the responsible Directorates-General. Sub-groups shall operate in compliance with the horizontal rules and shall report to the group. They shall be dissolved as soon as their mandate is fulfilled.
2. Sub-groups shall be composed of members of the group. Members of the group may nominate the same representatives participating in the work of the group or other representatives with expertise in the specific questions identified on the basis of terms of references referred to in paragraph 1.

⁵ C(2016) 3301.

Article 7

Invited experts

The Commission may invite experts with specific expertise with respect to a subject matter on the agenda to take part in the work of the group or sub-groups on an ad hoc basis.

Article 8

Rules of procedure

On a proposal by and in agreement with the Commission, in accordance with Art. 17 of the horizontal rules, the group shall adopt its rules of procedure by simple majority of its members on the basis of the standard rules of procedure for expert groups. Sub-groups shall operate in compliance with the group's rules of procedure.

Article 9

Professional secrecy and handling of classified information

The members of the group and their representatives, as well as invited experts, are subject to the obligation of professional secrecy, which by virtue of the Treaties and the rules implementing them applies to all members of the institutions and their staff, as well as to the Commission's rules on security regarding the protection of Union classified information, laid down in Commission Decisions (EU, Euratom) 2015/443⁶ and 2015/444⁷. Should they fail to respect those obligations, the Commission may take all appropriate measures.

Article 10

Transparency

1. The group and its sub-groups shall be registered in the Register of Commission expert groups and other similar entities ('the Register of expert groups').
2. The names of the European bodies and networks referred to in Article 4 shall be published on the Register of expert groups.
3. All relevant documents, including the agendas, the minutes and the participants' submissions, shall be made available either on the Register of expert groups or via a link from the Register of expert groups to a dedicated website, where this information can be found. Access to dedicated websites shall not be submitted to user registration or any other restriction. In particular, the agenda and other relevant background documents shall be published in due time ahead of the meeting, followed by timely publication of minutes. Exceptions to publication shall only be possible where it is deemed that disclosure of a document would undermine the protection of a public or private interest as defined in Article 4 of Regulation (EC) N° 1049/2001⁸.

⁶ OJ L 72, 17.3.2015, p. 41.

⁷ OJ L 72, 17.3.2015, p. 53.

⁸ OJ L 145, 31.5.2001, p. 43.

Article 11

Meeting expenses

1. Participants in the activities of the group and its sub-groups shall not be remunerated for the services they offer.
2. Travel and subsistence expenses incurred by participants in the activities of the group and its sub-groups shall be reimbursed by the Commission. Reimbursement shall be made in accordance with the provisions in force within the Commission and within the limits of the available appropriations allocated to the Commission departments under the annual procedure for the allocation of resources.

Done at Brussels, 23.3.2023

For the Commission
Thierry BRETON
Member of the Commission