US pushes to change EU's digital gatekeeper rules

Washington officials worry that the Digital Markets Act could target American firms.

The U.S. government disclosed last year that the new malware was capable of infiltrating U.S. industrial control systems across multiple key sectors | Nicolas asfouri/AFP via Getty Images

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January 31, 2022 1:16 pm CET
6 minutes read

The United States is pressing the EU to revise rules targeting digital giants to make them focus less on American companies and ensure they will also cover tech firms from outside the U.S., according to a new paper distributed to Brussels officials and seen by POLITICO.

The move, which aims to change the so-called Digital Markets Act, highlights Washington's concern about plans to rein in the biggest tech companies as the U.S. government is targeting Brussels officials in the midst of ongoing talks in the Transatlantic Trade and Technology Council, a high-level transatlantic discussion group. In addition to the scope of the plans, the Biden administration also cites security concerns regarding Brussels' efforts.

"We think it is important that regulatory efforts on either side of the Atlantic do not create unintended adverse consequences, such as inadvertent cybersecurity risks or harms to technological innovation," the paper states. "We have also been clear that we oppose efforts specifically designed to target only U.S. companies where similarly situated non-U.S. companies would not be covered."

Late last week Washington circulated the eight-point policy document to "select" MEPs and member countries, in the middle of key negotiations between EU institutions on the bloc's draft gatekeeper rules.

The rules — currently being hotly debated by representatives from the European Parliament and the EU Council — lay out a series of prohibitions and obligations for some of the world's largest digital platforms, including Google, Amazon, Meta (Facebook) and Apple. The draft measures cover a range of practices from unfair data use across platform services to self-referencing restrictions. Negotiators are seeking to adopt the DMA on March 24.

The U.S. paper calls on the EU to avoid a narrow scope of platforms that will come under the new rules, avoiding the potential to disproportionately target American companies — a concern previously highlighted by U.S. Commerce Secretary Gina Raimondo.

The move from the U.S. comes after the Parliament adopted a text in December proposing a set of quantitative criteria that would reduce the number of firms within the DMA's scope, resulting in the likelihood that the rules would principally target American firms. The Commission and Council's metrics, meanwhile, would broaden the number of firms subject to the new rules.

"The United States is concerned that substantially only U.S companies will be in scope if the Parliament's proposal to raise the threshold to 8 billion euros in annual turnover and a market capitalization of 80 billion euros is adopted in the final DMA," the paper states.

"The EP's proposed scope would exclusively target U.S. companies, not just when the law is implemented, but for years to follow. The United States continues to note that it will be important that the EU implement the law in a non-discriminatory fashion and ensure appropriate coverage for all appropriate firms," the paper continues.

The EU has over recent months attempted to deflect transatlantic criticisms concerning the alleged "anti-American" nature of the DMA. Following the adoption of the Parliament's text, France's Digital Minister Cédric O told POLITICO that the efforts were not discriminatory, and were based solely on a set of quantitative criteria that is a signpost of market power.

Elsewhere, Washington also hits out at the Parliament for raising the maximum fines that can be leveled for breach of the rules, supporting the Commission's proposal to limit the fines to 10 percent of worldwide annual turnover.

"We oppose the Parliament's proposed widening of the fine range to "no less than 4 percent and not exceeding 20 percent of its total worldwide turnover," the document says.

Security concerns and Brussels meetings

The Washington document also raises concerns about the DMA's impact on security, noting that certain obligations could create vulnerabilities online. This is particularly the case regarding the practice of "sideloading," a process that allows for the distribution of apps outside closed systems, such as Apple's App Store. This has long been a concern of Apple itself, with CEO Tim Cook saying last year that the DMA's prohibition on sideloading restrictions would "destroy the security of iPhone."

Elsewhere, the U.S. interagency paper calls for the scope of so-called core platform services to be restricted to the proposals put forward by the Commission — without the inclusion of virtual assistants, web browsers and connected TVs, as had been proposed by the Parliament.

And while the DMA negotiations themselves have moved along at a breakneck speed, the U.S. wants the EU to avoid a rushed timeline — providing at least 12 months for implementation and three months for notification requirements, when gatekeepers will be responsible for notifying the Commission that their business falls within the rules' scope.

Washington does, however, believe that the Commission should be the sole enforcer of the new measures and says that there should also be effective harmonization between EU and national rules.

In addition to last week's paper, meetings between U.S. representatives and those involved in the ongoing DMA negotiations have also been recently taking place and the U.S. Mission to the EU has filed a request to hold bilateral talks with the sitting French Council presidency, two EU officials confirmed.

The news of a U.S. charge against the EU's DMA comes following a recent decision from negotiators to fast-track adoption of the rules, which the French presidency regards as one of its priorities during its six-month tenure at the helm of the EU Council.

Washington's offensive, however, may only intensify as that date draws nearer. Commerce Secretary Raimondo, one of the U.S.'s preeminent critics of the scope of the DMA, is set to deliver a keynote speech to a Brussels online audience this week.