



EU EMERGENCY RESPONSE UPDATE

KEY POLICY & REGULATORY DEVELOPMENTS

No. 108 | 16 October 2023

This regular alert covers key regulatory developments related to EU emergency responses, including in particular, to COVID-19, Russia's war of aggression against Ukraine, and cyber threats. It does not purport to provide an exhaustive overview of developments.

This regular update expands from the previous COVID-19 Key EU Developments – Policy & Regulatory Updates (last issue [No. 99](#)).

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COMPETITION & STATE AID

Competition

European Commission announces expiry of antitrust block exemption for liner shipping consortia (see [here](#))

On 10 October 2023, the Commission announced the forthcoming expiry of the Consortia Block Exemption Regulation (CBER) for liner shipping ([Commission Regulation \(EC\) No 906/2009 of 28 September 2009 on the application of Article 81\(3\) of the Treaty to certain categories of agreements, decisions and concerted practices between liner shipping companies](#)).

Background. Liner shipping is the provision of regular maritime freight transport (primarily by container) between ports on a particular route. The supply chain crisis that followed the COVID-19 outbreak spotlighted the significant role played by the sector in trade and globalization. In 2020, maritime transport carried some 70% of the value of international trade, of which some two-thirds was carried by containers.

The Commission notes that liner shipping services require significant levels of investment. Therefore, such services are regularly provided by several shipping companies (i.e., carriers) cooperating in consortia, which can lead to economies of scale and benefit users of the shipping services (i.e., shippers and freight forwarders) through improved coverage of ports and better services.

The CBER thereby exempted liner shipping consortia from EU antitrust rules under certain conditions, among which that customers shall enjoy a fair share of the resulting benefits.

Expiry of CBER. In deciding against prolonging the CBER, the Commission considered that it no longer furthered competition in the shipping sector. In this respect, Commissioner Didier Reynders, responsible for Competition, contended that the CBER's expiry reflected that the key sector of shipping services had undergone "*significant structural changes*" (e.g. carrier consolidation, global alliances, vertical integration). According to Commissioner Reynders, these changes resulted in "*new market conditions, which became apparent during the coronavirus pandemic. Our evaluation has shown that a dedicated block exemption for shipping lines is no longer adapted to those new market conditions.*" (emphasis added)

The Commission's decision followed a review process launched in August 2022, which gathered evidence from stakeholders, including the most interested parties in the maritime liner shipping supply chain (carriers, shippers and freight forwarders, as well as ports and terminal operators) on the impact of consortia between liner shipping companies and the CBER on their operations. The Commission published the results of the review process in a [Staff Working Document](#) of 10 October 2023.

Overall, the Commission viewed evidence collected from stakeholders as reflecting the CBER's "*low or limited effectiveness and efficiency*" during the 2020-2023 period. In particular, while the COVID-19 pandemic revealed the need to enhance the resilience of EU supply chains, the Commission asserted that the CBER's exceptional antitrust regime for shipping lines appeared to have led to fractures between the different categories of stakeholders (both on the sea and land sides), to the detriment of arrangements that would better accommodate the interests of all.

The Staff Working Document, in particular, reported that during the height of the COVID-19 crisis, certain shippers called for the CBER's immediate repeal, arguing that the regime created the impression that they were treated unfairly and that the maritime sector lacked a level playing field.

The Commission [Q&A](#) provides further details on the decision on the CBER's expiry.

Looking ahead. While the CBER will expire on 25 April 2024, the Commission stressed that cooperation between shipping lines will not become unlawful under EU antitrust rules. Rather, carriers operating to or from the EU will self-assess the compatibility of their co-operation agreements on shipping lines under EU antitrust rules, based on the extensive guidance provided in the new [Horizontal Block Exemption Regulation and Specialisation Block Exemption Regulation](#) (HBERs), adopted in June 2023, which apply to all economic sectors.

The UK is also currently reviewing the renewal of the CBER, which the UK had retained under its laws subsequent to the UK's withdrawal from the EU (also due to expire on 25 April 2024). Global shipowners are reportedly urging the UK to continue the CBER regime, arguing in particular that this facilitates the creation and operation of consortia by significantly reducing compliance burdens for carriers and by providing sector-specific legal certainty.

The UK Competition and Markets Authority (CMA) initiated a [consultation](#) in January 2023 on renewing the CBER, which indicated that it "*provisionally considers that the current retained CBER regime has proven to be appropriate and fit for purpose. The CMA therefore does not consider that major changes to the existing regulation is warranted.*" (emphasis added) The CMA is reportedly now considering consultation responses before making a final recommendation to the UK Secretary of State by end-2023.

State aid

European Court of Auditors releases Annual Report on implementation of EU budget for 2022 (see [here](#))

On 5 October 2023, the European Court of Auditors (ECA)* released its Annual Report on implementation of the EU budget for 2022. Each year, the ECA examines EU revenue and expenditure towards assessing whether the annual accounts are reliable and whether income/expenditure transactions follow applicable rules.

The European Commission, commenting on the Annual Report's release, noted that in 2022, the EU budget continued to serve to address major crises, providing crucial support to Ukraine and to those affected by the socio-economic consequences of the war, with assistance to Ukraine and the Member States amounting to €15.4 billion. Additionally, support amounting to €138.7 billion in 2022 came from the RRF (Recovery and Resilience Facility), the main component of [NextGenerationEU](#), the EU's €806.9 billion plan for rebounding from the economic consequences of the pandemic and for fostering the green and digital transitions.

The Annual Report's main findings notably include:

- The EU's accounts for the 2022 financial year provided a "*true and fair view*", and revenue transactions were considered "*error-free*."

- Issuance of an “adverse opinion” on EU budget expenditure, i.e., ECA auditors identified widespread problems. The ECA noted that as in the past three years, its auditors concluded that the level of error was “*material and pervasive*,” with €196 billion in spending from the EU budget deemed as affected by a significant increase in the level of error to 4.2% in 2022 (from 3% in 2021). Such estimated level of error was not a measure of fraud, inefficiency or waste, but was rather an estimate of the amount of money not used in compliance with EU and national rules. Still, the auditors did identify 14 cases of suspected fraud, as reported to the European Anti-Fraud Office (OLAF) and the European Public Prosecutor’s Office (EPPO).
- Issuance of a “qualified opinion” on RRF expenditure, i.e., while auditors identified problems, these were not pervasive. The ECA noted that 2022 was the second year of implementation of the RRF, with, EU countries receiving funds in exchange for achieving predefined milestones or targets, including 13 grant payments (value of €46.9 billion) made to 11 Member States in 2022.

According to ECA auditors, 11 of these 13 RRF grant payments were affected by regularity issues, as 15 of the 281 milestones and targets examined were either not satisfactorily fulfilled or did not comply with eligibility conditions. As a result, six payments were affected by material error. The auditors also identified cases of weak design in the measures and underlying milestones or targets, and problems with the reliability of information that Member States included in their management declarations.

The Commission disagreed, however, with the ECA's findings of limited instances of irregular RRF payments. The Commission maintained that all RRF payments in 2022 were made correctly, and that in any case, by the Commission's estimates, the impact of the ECA's alleged findings of irregularities would be far below the materiality threshold of 2%.

Furthermore, the Commission emphasized its continued improvement of management of the EU budget to lower the risk of errors. Concerning the RRF, the Commission asserted that it had notably already largely implemented ECA's recommendation to improve its internal processes for assessing payment requests, compared to the financial year 2022 (*for further details, see the Commission's recently published Second Annual Report on implementation of the RRF, [Jones Day EU Emergency Response Update No. 107 of 29 September 2023](#)*).

On the war in Ukraine, the ECA noted that the EU budget’s total exposure to potential future obligations was €248.3 billion by end-2022 (up from €204.9 billion in 2021). Part of this increase was due to the EU’s financial assistance to Ukraine, which more than doubled in 2022 (to €16 billion) compared to 2021 (€7 billion). The auditors further noted that the approval of an additional €18 billion in end-2022 would significantly increase this exposure for future EU budgets.

Among the Annual Report’s recommendations, this included recommending that given the EU budget’s increasing exposure from borrowing for additional payment needs, such as those triggered by the COVID-19 crisis and Russia’s war against Ukraine, the Commission should take any appropriate actions needed to ensure that its risk mitigation tools have sufficient capacity and make public its estimate of total annual exposure. The ECA set a target implementation date for this recommendation of end-2025.

* The ECA, an institution of the European Union, is the external auditor of the EU's finances and serves as the independent guardian of the financial interests of all EU citizens.

European Commission approves further schemes under new Temporary Crisis and Transition Framework to support economy in context of Russia's invasion of Ukraine and accelerating green transition and reducing fuel dependencies (see [here](#))

The Commission approved additional measures under the new State aid Temporary Crisis and Transition Framework (new TCTF) to support the economy in the context of Russia's invasion of Ukraine and in sectors key to accelerating the green transition and reducing fuel dependencies (applied as from 9 March 2023, see also [Jones Day COVID-19 EU Update No. 99 of 17 March 2023](#)).

Among the most recently approved State aid schemes under the new TCTF (from 14 September 2024 to 16 October 2023):

- €150 million Italian scheme to support small and medium-sized companies (“SMEs”) in the region of Calabria in the context of Russia's war against Ukraine.
- €24 million Romanian State aid scheme to support investments in sea and inland ports in the context of Russia's war against Ukraine.
- €53.6 million (PLN 240 million) Polish scheme to support corn traders in the context of Russia's war against Ukraine.
- €400 million Bulgarian State aid measure to support Bulgargaz EAD in the context of Russia's war against Ukraine.
- €20 million Slovenian scheme to support small and medium-sized companies (“SMEs”) in the context of Russia's war against Ukraine.
- €100 million Italian scheme to support the production of electrolyzers to foster the transition to a net-zero economy.
- €1.2 billion Polish scheme to support energy-intensive companies in the context of Russia's war against Ukraine.
- €2.5 billion (60 billion CZK) Czech scheme to help manufacturing companies to decarbonize their production processes and improve their energy efficiency to foster the transition to a net-zero economy.
- €300 million French scheme to support investments in the use of solid recovered fuels to foster the transition to a net-zero economy.
- €132.3 million (PLN 610 million) Polish scheme to support the cereal and oilseeds production sectors in the context of Russia's war against Ukraine.
- €193 million Lithuanian scheme to support offshore wind farms to foster the transition to a net-zero economy.
- €2 million (DKK 15 million) Danish scheme to support pharmaceutical wholesalers in the context of Russia's war against Ukraine.
- €44.7 million (PLN 200 million) Polish scheme to support the corn production sector in the context of Russia's war against Ukraine.
- €20 million Estonian scheme to support companies in the context of Russia's war against Ukraine.
- €70 million Slovak scheme to support cattle, food and beverage producers in the context of Russia's war against Ukraine.

TRADE / EXPORT CONTROLS

European Commission launches anti-subsidy investigation into imports of battery electric vehicles from China (see [here](#))

On 4 October 2023, the European Commission officially launched an anti-subsidy investigation into imports from China of battery electric vehicles (BEVs) designed for the transport of persons, with the publication of a notice of initiation (NOI) in the Official Journal of the EU (see also [Jones Day EU Emergency Response Update No. 106 of 13 September 2023](#)).

Why an investigation. In announcing the formal opening of the investigation, President von der Leyen stated that the electric vehicle sector holds “*huge potential*” for the EU’s future competitiveness and green leadership, with EU car manufacturers and related sectors already investing in fully exploiting such potential. With this in mind, she declared:

“Wherever we find evidence that [such EU] efforts are being impeded by market distortions and unfair competition, we will act decisively. And we will do this in full respect of our EU and international obligations - because Europe plays by the rules, within its borders and globally. This anti-subsidy investigation will be thorough, fair, and fact-based.”

The Commission initiated the investigation on an ex officio basis (i.e., upon the Commission’s own initiative, under Regulation (EU) 2016/1037 on protection against subsidized imports from countries not members of the European Union, Article 10(8)), rather than following a formal complaint by members of the relevant industry. While it appears that a number of EU Member States and some EU BEV manufacturers support the Commission’s decision to investigate, others reportedly oppose eventual anti-subsidy measures.

The NOI indicated that the Commission has sufficient evidence (e.g., based on publicly available information) tending to show the existence of subsidization of BEVs originating from China. Such subsidies have allegedly allowed the subsidized imports to rapidly increase their market share in the EU to the detriment of the EU industry, at prices reportedly 20% lower than those of similar EU products. The EU car industry’s potential annual loss in net profits due to Chinese competition is projected to surpass €7 billion by 2030, according to a European Parliament report of 18 October 2023 (see [here](#), citing an [Allianz report](#)).

The investigation. The Commission’s investigation will commence by seeking to determine whether (i) BEV value chains in China benefit from illegal subsidization and (ii) such subsidization causes or threatens to cause economic injury to EU BEV producers.

Where such findings are made, the investigation will assess the likely consequences and impact of anti-subsidy measures on importers, users and consumers of BEV in the EU. The Commission will then establish whether it is in the EU’s interest to remedy the effects of such unfair trade practices by imposing anti-subsidy duties on imports of BEV from China.

The investigation of subsidization and injury will cover the period from 1 October 2022 to 30 September 2023. The examination of trends relevant for the assessment of injury will cover the period from 1 January 2020 to 30 September 2023.

The investigation will adhere to legal procedures under EU and WTO rules, notably allowing all concerned parties, including the Chinese government and companies/exporters, to present their comments, evidence and arguments.

Looking ahead. The investigation will be concluded within maximum 13 months of initiation. Provisional anti-subsidy duties may be imposed within 9 months after initiation, with any definitive measures to be imposed up to 4 months later or within 13 months of the initiation of the investigation.

The investigation may lead to the EU adopting countervailing duties* on covered imports of Chinese BEV, which could include BEVs produced by EU companies in China and imported into the EU.

** Countervailing duties are most commonly set on an ad valorem basis, for a period of five years (fixed rate duties, minimum import prices, or price undertaking measures are also possible).*

European Commission adopts Recommendation on critical technology areas for EU's economic security (see [here](#))

On 3 October 2023, the European Commission adopted a Recommendation on critical technology areas for the EU's economic security for further risk assessment with Member States (see also [Jones Day Alert](#), "European Commission Signals Increased Scrutiny in Semiconductors, AI, Quantum Technologies, and Biotechnologies," October 2023).

The Recommendation follows from the Joint Communication on a European Economic Security Strategy of 6 June 2023, which set out a framework for ensuring economic security by (i) promoting the EU's economic base and competitiveness; (ii) protecting against economic security risks; and (iii) partnering with the broadest possible range of countries to address shared concerns or interests.

The Joint Communication highlighted in particular that Europe was insufficiently prepared for certain new and emerging risks. The COVID-19 pandemic and Russia's war against Ukraine, for example exposed the risks of highly concentrated supply chains to the European economy (see also [Jones Day EU Emergency Update No. 103 of 23 June 2023](#)).

The Joint Communication thereby proposed in-depth risk assessments of economic security in four areas: (i) resilience of supply chains, including energy security; (ii) physical and cybersecurity of critical infrastructure; (iii) technology security and technology leakage; and (iv) weaponization of economic dependencies or economic coercion.

The Recommendation now addresses the above-mentioned point (iii) on risks related to technology security and technology leakage, notably by identifying ten critical technology areas.*

Among these ten critical areas, the below four are identified as highly likely to raise the most sensitive and immediate risks to technology security and leakage, such as due to dual-use applications for civilian and military purposes:

1. Advanced Semiconductors technologies (e.g., microelectronics (including processors), high frequency chips, semiconductor manufacturing equipment at very advanced node sizes);

2. Artificial Intelligence technologies (e.g., cloud and edge computing, data analytics, language processing, object recognition);
3. Quantum technologies (e.g., quantum computing, cryptography, and communications);
4. Biotechnologies (e.g., techniques of genetic modification (such as creating harmful micro-organisms), new genomic techniques, and synthetic biology).

The Commission and the Member States should together initially conduct collective risk assessments of these four areas. In this respect, the Recommendation sets out guiding principles to structure such collective risk assessments, such as:

- Identifying and analyzing vulnerabilities according to their potential impact on the EU's economic security and the degree of likelihood that the negative impact materializes (e.g. by identifying main types of threats and threat actors; taking into account the value chain of the technologies, including any chokepoints and expected future chokepoints; and mapping the EU's relative position in each technology, including key players).
- Prioritizing risks with potential effects on the entire EU.
- Taking into account private sector input.
- Ensuring the confidentiality, upon request, of inputs received from Member States or private sector. The final outcome document of the collective risk assessment will be classified appropriately.

Next steps. The Commission will engage with Member States, through the appropriate expert fora, to undertake collective risk assessments of the four above-mentioned technology areas by end-2023.

Based on these initial collective risk assessments, dialogue with Member States and eventual further inputs on the listed technology areas, the Commission may present further initiatives for risk assessments by Spring 2024.

* *The ten critical technology areas: (1) Advanced semiconductors technologies; (2) Artificial intelligence technologies; (3) Quantum technologies; (4) Biotechnologies; (5) Advanced connectivity, navigation and digital technologies; (6) Advanced sensing technologies; (7) Space & propulsion technologies; (8) Energy technologies; (9) Robotics and autonomous systems; and (10) Advanced materials, manufacturing and recycling technologies (see [Annex to Recommendation](#)).*

MEDICINES AND MEDICAL DEVICES

European Commissioner speaks at Future of Health Summit on Digitalisation as a Driver for Sustainable and

On 12 October 2023, the European Commissioner for Health and Food Safety, Stella Kyriakides, spoke on the topic of "Digitalisation as a Driver for Sustainable and Resilient Global Health" at the 2023 Future Of Health Summit.

Commissioner Kyriakides emphasized that the COVID-19 pandemic demonstrated that digital technologies offer new opportunities to transform the way we receive and provide healthcare.

Resilient Global Health ([here](#))

Discussing the transformative power of digitalization to make the healthcare sector more resilient, sustainable and accessible, the Commissioner highlighted various EU initiatives such as:

- The planned [European Health Data Space](#), which will gather the health data of 430 million citizens and provide secure access to and sharing of health data at an unprecedented scale. The Data Space will be based on the latest EU safeguards on data governance and cybersecurity, as well as the interoperability of all electronic health records. Amongst other things, the Data Space will allow scientists, innovators, pharma companies and policy-makers to use the data for policy-making and research (see also [Jones Day COVID-19 Update No. 84 of 17 May 2022](#)).

Commissioner Kyriakides further noted that the Commission is presently striving to conclude this project, which is currently under inter-institutional negotiations, as quickly as possible.

- The [eHealth Network](#), established under the aegis of the European Commission, is a voluntary network that provides a platform of Member States' competent authorities dealing with eHealth to enable the exchange of health data across borders and to develop common guidelines. Currently, 13 Member States are connected to the MyHealth@EU infrastructure, exchanging electronic prescriptions or patient summaries across borders (see also [Jones Day COVID-19 Update No. 40 of 17 March 2021](#));
- The [European Cancer Imaging Initiative](#) supports the development of new computer aided tools to improve screenings, diagnoses and personalized medicine. The Initiative, in particular, currently connects datasets of images of 9 cancer types (breast, colon, lung, prostate, rectum, liver, glioma, neuroblastoma, glioblastoma), for a total of over 200,000 image series of about 20,000 individuals; and
- [Digital healthcare services](#), such as telemedicine or m-health, facilitate access to expertise in geographically remote locations. The pandemic accelerated the uptake of these technologies, with the percentage of EU citizens having a remote consultation (either online or by telephone) with a general practitioner rising from almost 29% in June 2020 to nearly 39% in February 2021.

In addition, Commissioner Kyriakides emphasized that digital skills must be developed to fully reap the benefits of digital transformation in healthcare. Various EU-funded projects, such as the [EU4Health](#) programme, are supporting projects to deliver digital skills training programs for health professionals (see also [Jones Day COVID-19 Update No. 93 of 1 December 2022](#)).

European Commissioner speaks at event launching a financing partnership to eliminate polio ([here](#))

On 11 October 2023, the European Commission, European Investment Bank, World Health Organization (WHO), and UNICEF announced a new financing partnership to eliminate polio at the event "Financing the global fight against polio" (see [here](#)).

The keynote speaker, European Commissioner for Health and Food Safety, Stella Kyriakides, emphasized the need to do more to eliminate polio, particularly against the backdrop of the COVID-19 pandemic, which taught the

value of primary care, the vital need for resilient health systems, as well as the need to keep health high on the political agenda.

The new financing partnership aims to advance polio eradication and strengthen healthcare systems in low- and lower middle-income countries, including by specifically earmarking EUR 500 million to tackle polio. The financing partnership is part of the EU Global Health Strategy,^{*} whose the three inter-connected aims are to:

- (i) increase efforts to deliver better health and well-being to people particularly for those most in need, including fighting communicable diseases like polio and tuberculosis;
- (ii) strengthen health systems, advance universal health coverage and promote health sovereignty; and
- (iii) prevent and combat health threats, applying a One Health approach, and in particular fighting against antimicrobial resistance (AMR).

Commissioner Kyriakides indicated that, in practice, these aims mean:

- Ensuring equitable access to vaccines and medical treatments by strengthening local pharmaceutical systems and manufacturing capacity;
- Prioritizing the root causes of ill health, tackling workforce imbalances, and leveraging the [Team Europe](#) approach;
- Maximizing the potential of digitalization in healthcare – including through the recent launch of a landmark [digital health partnership](#) with the WHO in June 2023; and
- Developing stronger global surveillance and detection of pathogens, such as investing in global wastewater surveillance. In this respect, the European Commission’s international conference on a [Global Wastewater Surveillance System for Public Health](#) on 15 November 2023 aimed at exploring a vision for a global consortium dedicated to this issue.

In closing, Commissioner Kyriakides emphasized that this new initiative to eradicate polio is a “*massive investment in people, in prevention, in partnerships and in health systems,*” reflecting action by the G7 and G20, UN General Assembly, and partners around the world.

** On 30 November 2022, the European Commission adopted the [Communication](#) from the Commission on the EU Global Health Strategy: Better Health for All in a Changing World. The Strategy emphasizes that the COVID-19 pandemic starkly spotlighted that health has no borders and that global health is a geopolitically critical sector and fundamental to the EU’s open strategic autonomy (see also [Jones Day COVID-19 Update No. 93 of 1 December 2022](#)).*

CYBERSECURITY, PRIVACY & DATA PROTECTION

European Commission and Member States simulate large-scale cyberattacks

On 2 October 2023, the annual “Blueprint Operational Level Exercise” (Blue OLEx 2023) took place to test the EU’s preparedness in the event of a cyber-related crisis. The European Commission, senior cybersecurity representatives from EU Member States, and the EU Agency for Cybersecurity (ENISA) took part in this two-day event.

**in annual
“Blueprint
Operational Level
Exercise” (see
[here](#))**

To recall, the Blue OLEx event forms part of the [EU Cybersecurity Strategy](#) and aims to enhance common coordination, situation awareness and decision-making processes, while fostering trust-building and information sharing (*on the 2022 Blue OLEx event, see [Jones Day COVID-19 Update No. 91 of 9 November 2022](#)*).

The EU Cybersecurity Strategy, presented in December 2020, was a component of the EU Recovery Plan to lead Europe out of the COVID-19 crisis (see [Jones Day COVID-19 Update No. 10 of 29 May 2020](#)) The Strategy’s main objective is to build resilience to cyber threats and ensure that citizens and businesses benefit from trustworthy digital technologies.

The Blue OLEx 2023 was organized within the framework of the European Cyber Crisis Liaison Organization Network (“EU-CyCLONe”), which was formally established in January 2023 by the [NIS2 Directive](#) (Directive 2022/2555 on measures for a high common level of cybersecurity across the Union) (*see also Jones Day Alert, “EU Adopts Enhanced Legal Framework to Provide for High Common Level of Cybersecurity”, December 2022, [here](#)*).

Participants of the Blue OLEx 2023 also discussed strategic cyber policy issues, including a coherent EU-level framework for crisis management.

**European
Commission
publishes template
for gatekeeper
compliance report
under Digital
Markets Act (see
[here](#))**

On 9 October 2023, the European Commission published a template for the compliance report that gatekeepers must submit within 6 months after their designation under the Digital Markets Act (“DMA”, [Regulation \(EU\) 2022/1925](#) of 14 September 2022 on contestable and fair markets in the digital sector and its [Implementing Regulation 2023/814 of 14 April 2023](#)).

To recall, the DMA aims to prevent the imposition of unfair conditions on businesses and end users by those designated as “gatekeepers” (i.e., large online platforms with a significant impact on the internal market and active in multiple EU countries) that provide a “core platform service” (e.g., online search engines; online social networking services, web browsers, virtual assistants)). The DMA became applicable in May 2023 (see [Jones Day EU Emergency Update No. 102 of 3 May 2023](#)) and was a priority initiative under the Joint Declaration on EU Legislative Priorities for 2022 (see [Jones Day COVID-19 Update No. 72 of 10 January 2022](#)), whose objective was to guide the EU’s recovery from the COVID-19 crisis.

The DMA provides that gatekeepers should provide the Commission with reports providing detailed and transparent information needed to assess their effective compliance with certain provisions of the DMA. The Commission’s template specifies the minimum information that gatekeepers should provide in such compliance reports, such as:

- [Information about the reporting undertaking](#) (e.g., information on those responsible for drafting the compliance report, including details of all external legal or economic counsel or external technical experts).
- [Information on complying with certain DMA provisions](#),* indicating that a gatekeeper must provide an “*exhaustive explanation*” of how it complies with such obligations, including any supporting data and internal documents, etc.), such as:
 - when the measure was implemented;

- scope of the measure in terms of the products/services/devices covered and geographic scope;
 - any consultation with end users, business users and/or any interested parties carried out in the context of elaborating and implementing the measure, and how input of these consulted parties has been taken into account; and
 - a detailed explanation of how the gatekeeper has assessed compliance with a given obligation, including whether any assessment projects were undertaken, such as through external or internal audits.
- Information on the compliance function and monitoring, such as:
 - description of the gatekeeper’s compliance function (such as task allocations, reporting lines);
 - details of head of the compliance function and list of compliance officers; and
 - description of the strategies and policies for taking up, managing, and monitoring compliance under the DMA (e.g., internal staff compliance training).
 - Non-confidential summary of the compliance report, which shall notably provide stand-alone texts that give a “*faithful comprehensive and meaningful picture*” of the compliance report’s content.

Next steps. Gatekeepers designated on 6 September 2023 (see [Jones Day EU Emergency Update No. 106 of 13 September 2023](#)) should submit the first compliance reports to the Commission by 7 March 2024. The Commission will publish a non-confidential summary of each report.

* *These gatekeeper obligations are set out in Articles 5-7 of the DMA, Chapter III on Practices of Gatekeepers that Limit Contestability or are Unfair.*

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