AT Comments on the draft template on Article 15 DMA

We thank for the opportunity to comment on the draft template for the reports according to Article 15 Digital Markets Act and want to make the following remarks in this regard. Furthermore, we attach the comments of the Ministry for Social Affairs, Health, Care and Consumer Protection and the Austrian Chamber of Labour in the Annex for your information.

On Section 2:

Comments on Section **2.1 lit. b:** If consent for data processing is required according to the GDPR, further information may be relevant, e.g. how the requirements for consent (Article 7, Article 8 GDPR) are met. Also for cases where consent is not required, more detailed explanations may be relevant, e.g. for Article 6 (1) lit. f GDPR a description of the balancing of interests, especially when data of children are processed. Furthermore, explanations on how the principles relating to processing of personal data according to Article 5 GDPR are complied with could be of interest.

In Section **2.1 lit. c** "*data and personal data originating from third parties*" are mentioned. We suggest, that where there are tools used to collect data for profiling in applications operated by third parties, a indication of the existence of such tools and a description of how these tools work should be required as well. For example, the embedding of a "like"-button as described in the judgement ECJ of July 29, 2019, C-40/17 on a third party website can result in the possibility for the potential gatekeeper to receive data from users and carry out personalized advertising.

In addition to the mentioned safeguards in Section **2.1 lit. f** the template may also refer to what measures do gatekeeper take to ensure that they do not display advertisements to consumers based on profiling using special categories of personal data pursuant to Article 9 (1) GPDP.

Regarding Section **2.1 lit. h** (and the corresponding footnote 4)we have the impression the wording for "*automated decision-making*" is narrower than that according to Article 22 GDPR, since reference is (only) made to "*legal effects*" (or "*legal rights*" in footnote 4). In order to ensure better protection of data subjects, it is suggested that the wording of Article 22 para 1 GDPR be used ("[...] *produces legal effects concerning him or her or similarly significantly affects him or her*"). Furthermore, Section 2.1. lit. h may also mention where applicable, the compliance with the exceptions under Article 22 para 2 GDPR.

In Section **2.1.j** could also mention - in addition to the actions taken for awareness of profiling - the actions taken in order to comply with the rights of consumers under Article 15 ff GDPR (eg. how the right of access by the data subject is complied with).

In view of Section **2.1 lit. k** we suggest to also require the evidence of compliance with Article 25 para 2 GDPR (data protection-friendly settings by default) from the gatekeeper. Experience shows that when using social networks and/or apps in particular, the consent for profiling often has to be "deselected" (opt-out) in the settings when registering a new account, although Article 25 para 2 GDPR requires opt-in settings.

Regarding Section **2.1. lit. l**: In cases where consumers are given a choice, the presented alternatives to profiling could also be of interest.

As regards to Section **2.1 lit. m** we suggest to make the clarification, that the information on such assessment should also include the information whether a prior consultation according to Article 36 GDPR was carried out.

On Section 3:

In view of Section **3.1 lit. c** we are of the opinion that the information requirements regarding a possible conflict of interest with the respective auditing organisation should be broader. In any case, a detailed justification why there is no conflict of interest in the specific case and what measures the gatekeeper has taken in order to identify any conflicts of interest in advance should be required.