

## Alphabet's Observations on the Draft DMA Article 15 Template

1. Alphabet welcomes the opportunity to respond to the European Commission's (**Commission**) consultation on the draft template for the audited report that gatekeepers will be required to submit under Art. 15 DMA (the **Draft Template**). Art 15 DMA aims to provide the Commission, the European Data Protection Board as well as the public with more transparency on the profiling techniques used by gatekeepers.
2. The Draft Template is relatively comprehensive and requires gatekeepers to provide detailed information and data. However, there are several aspects of the Draft Template which seem to go beyond the scope set out in Art. 15 and Recital 72 DMA and which would benefit from clarification. As laid out in Art. 15 DMA, gatekeepers are only required to submit an "independently audited description of any techniques for profiling of consumers", and Recital 72 DMA clarifies that this is specifically a "transparency obligation".
3. Against this background, the scope of the Draft Template should be revised, ensuring that the reporting obligations do not exceed the purpose of this transparency audit and the template's legal basis. In fact, compliance and respective audits are foreseen in other Articles of the DMA, DSA, GDPR and other regulations explicitly. Treating the two sorts of audits interchangeably would ignore Recital 72 DMA's explicit designation of Art. 15 DMA's audit as a "transparency" audit. In particular, the Draft Template requests information beyond consumer profiling, as well as information that is highly confidential or specific to compliance with regulations other than the DMA. This consultation must ensure that the final template reflects Art. 15 DMA's transparency objective and avoid any ambiguity and/or redundant and potentially conflicting reporting and auditing obligations under other regulations.
4. For instance, Section 2.1 m) requires gatekeepers to provide information on data protection impact assessments for profiling techniques.. Such data protection impact assessments are an important aspect of compliance with the GDPR. However, as with other information required in the Draft Template, information on data protection impact assessments is outside the scope of the transparency goals of Art. 15 and Recital 72 DMA. Requiring an audited statement regarding GDPR compliance processes would also be duplicative in part of other obligations and may create ambiguity regarding overlapping obligations. It is therefore suggested that the Commission does not include Section 2.1 m) in the final template.
5. Moreover, Section 2.1 f) requires gatekeepers to provide, i.a., "a numbered list with a detailed description of the technical safeguards in place to avoid the presentation of advertisements [...] based on profiling of minors or children". Alphabet is committed to the protection of minors and to comply with the according

requirements under the GDPR and Art. 28 DSA as applicable. This includes a prohibition for providers of online platforms, such as Alphabet, to present advertisements based on profiling using personal data when they are aware that the recipient of the service is a minor (Art. 28(2) DSA).

6. However, assessing and demonstrating compliance with Art. 28 DSA is already subject to an annual independent compliance audit under Art. 37 DSA. Subjecting gatekeepers' technical safeguards for the protection of minors to a second audited description under Art. 15 DMA is disproportionate, entails a duplication in procedures, and, in particular, exceeds the statutory scope of Art. 15 and Recital 72 DMA. It is therefore suggested that this requirement is removed for all gatekeepers who are also subject to compliance and respective audit obligations under Art. 28 and 37 DSA.
7. Furthermore, the Draft Template seeks in various Sections a substantial amount of information which, as outlined above, partly exceeds the scope of Art. 15 and Recital 72 DMA and which must be organized in particular and newly defined ways. Consequently, gatekeepers may not have reasonably available all data and information requested or in the exact organization requested in the Draft Template. The process and engineering work to produce or gather data in new fashions across large enterprises is substantial, time-consuming, and may not be practicable in advance of an audit timeline for the first year's submission. In light of the principle of proportionality (Art. 5 TFEU and Recitals 27 et seq. DMA), the final template should recognise this and that it is possible to provide reasonably equivalent alternatives in substitution for any of the categories of information listed.
8. The Commission also anticipates that it may regularly update the DMA 15 template to add information. As any such updates will directly affect gatekeepers' reporting obligations under the DMA, the Commission should give gatekeepers the right to be heard also on any future changes to ensure that these are generally in line with the DMA and that these can be implemented in practice.
9. In sum, Alphabet proposes that the requirement in Section 2.1 f) is removed for all gatekeepers who are also subject to compliance and audit obligations under Art. 28 and 37 DSA and that Section 2.1 m) is not included in the final template. Moreover, it is suggested that the Commission uses this opportunity to clarify the wording used in the template and, in particular, to ensure that the final template requires gatekeepers to only provide information which is in scope of the transparency obligation under Art. 15 and Recital 72 DMA.