



MFE-MEDIAFOREUROPE N.V.
RESPONSE TO THE EUROPEAN COMMISSION CONSULTATION ON
THE TEMPLATE FOR THE AUDITED DESCRIPTION OF CONSUMER
PROFILING TECHNIQUES PURSUANT TO ARTICLE 15 OF REGULATION (EU)
2022/1925 (Digital Markets Act)

Background

1. Article 15(1) of Regulation (EU) 2022/1925 (“**Digital Markets Act**” or “**DMA**”) requires gatekeepers to submit to the European Commission (“**Commission**” or “**EC**”) an *“independently audited description of any techniques for profiling of consumers that the gatekeeper applies to or across its [designed] core platform services”* (our underlined) within six months after its designation.
2. Article 15(3) adds that
 - the gatekeeper shall make public an overview of the audited description referred to in par. 1, and that
 - the gatekeeper shall update both the description and the overview at least annually.
3. According to recital 72 of the DMA, the rationale of the provision is to increase transparency, given the negative effects of the gatekeepers’ collection and accumulation of large amounts of data from end users in terms of data protection and privacy. More specifically, such transparency on the gatekeepers’ techniques should help competitors to differentiate themselves by providing superior privacy guarantees. Moreover, the increased level of transparency should prevent gatekeepers from using “deep” consumer profiling techniques.
4. For completeness, “*profiling*” means “*any form of automated processing of personal data consisting of the use of personal data to evaluate certain personal aspects relating to a natural person, in particular, to analyse or predict aspects concerning that natural person’s performance at work, economic situation, health, personal preferences, interests, reliability, behaviour, location or movements*” (based on Article 4(4) of Regulation (EU) 2016/679 -“**GDPR**”, incorporated by reference in the DMA).
5. On 31 July 2023, the Commission opened the present consultation, inviting comments on the draft template which gatekeepers should use to comply with their obligations outlined above on consumer profiling techniques (“**Template**”).

6. MFE-MEDIAFOREUROPE N.V. (“**MFE**”) welcomes the opportunity to take part in this consultation, focusing in particular its comments on Section 2 of the Template, which, building on recital 72 of the DMA, lists the minimum information that gatekeepers will have to provide. Nonetheless, MFE must point out that it is somewhat difficult to contribute meaningfully to a consultation about the obligations of gatekeepers when the designation decisions have not been published yet. Indeed, had the designation decisions been published before the deadline of this consultation, many elements could have been very valuable for third parties to express their comments based on a more complete analysis. Thus, for the time being, MFE submits its limited comments below.
7. **First of all**, MFE welcomes the introduction of broad reporting obligations. In particular, MFE notes that the obligations of gatekeepers are broader than the ones of standard actors as this is fully justified by the particular position of gatekeepers and, therefore, by the objective of enhancing transparency and accountability.
8. **Second, as regards Section 2.1.f)**, MFE notes that gatekeepers will have to list and describe the safeguards necessary to avoid presenting ads based on profiling minors or children.
9. MFE welcomes the inclusion of this item in the list of information to be provided for the purpose of Art. 15 because it contributes to levelling the playing-field. MFE recalls that broadcasters have a long-standing due diligence obligation to establish adequate safeguards to protect minors and their personal data. Therefore, MFE welcomes that now this obligation applies also to gatekeepers.
10. **Third, in Section 2.1.h)** the Template provides that, when automated decision-making takes place based on an applied profiling technique, the gatekeeper shall indicate, *inter alia*, the “*legal effects*” that such automated decision produces or may produce.
11. According to MFE, the gatekeeper should be required to report also on the business impact of a given automated decision because such decisions then feed into the advertising campaign process.
12. In addition, MFE encourages the Commission to envisage adequate reporting verification mechanisms to enhance the effectiveness of the auditing process. This could be achieved for instance by imposing gatekeepers to keep and make available the log of each profiling action. The availability of logs would enhance the effectiveness of both the auditing process and the compliance reporting obligations laid down in Articles 5 to 7 as they can be used by third parties to express their views on compliance with the DMA.
13. In this regard, MFE believes that the logs would allow a more accurate verification of all the information provided by the gatekeeper, thus effectively enhancing transparency. Moreover, this would help in the business relationships with gatekeepers, which are marred by severe asymmetry of information. MFE strongly believes that transparency could only be achieved if the obligations are

effectively and constantly verifiable with no prior notice. By contrast, if there is only an ex post verification, the risk is that gatekeepers may easily bypass their obligations.

14. For instance, the availability of logs in relation to the obligation laid down in Art. 5(2) according to which gatekeepers cannot use users' personal data across their services to provide advertising services without their explicit consent, will allow the Commission and third parties to effectively verify the effectiveness of the compliance with such obligation.
15. **Finally**, MFE urges the Commission to make the content of the public overview available as soon as possible after the submission of the audited description.

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