

Mr. Roberto Viola
Director-General
DG CONNECT
European Commission
rue de la Loi 51
1000 Brussels

15 September 2023

Public Consultation on the template relating to the reporting on consumer profiling techniques

Dear Mr. Viola

On behalf of [Deloitte](https://www.deloitte.com), we are pleased to provide a submission to the Consultation on the template relating to the reporting on consumer profiling techniques (the “Template”), in respect of the Digital Markets Act (DMA).

Our response considers matters relating to the requirement that the description of consumer profiling techniques (the “Description”) shall be subject to independent audit. The Template contains several sections dedicated to providing guidance on this. We welcome the European Commission’s (the “Commission”) commitment to protecting the public interest through independent audit and assurance, and our recommendations are directed towards ensuring that these assurance engagements produce reports that are reliable and useful to the user.

We observed ten areas where we believe the Commission can make pragmatic enhancements to the Template and the assurance process. Our observations are listed below, and discussed in greater detail in the annex to this submission, along with our recommendations:

1. Neither the DMA nor the Template make it clear how frequently the audit of the Description must be carried out.
2. The timeline to audit is very short, potentially too short.
3. The Template appears to be flexible as to the audit period.
4. No assurance standard is specified in the DMA or the Template.
5. The Template does not make clear the role of the assurance provider in respect of the publicly available overview of the Description (the “Overview”), required by DMA Art 15(3). In particular, the Template does not clarify whether the Overview is within the scope of the audit.
6. The opinion reporting framework does not align to international standards.
7. The Template does not provide all necessary criteria against which to audit, and Section 2 relies on several complex terms and concepts that are not defined or explained.
8. The Template does not specify what should be included in the publicly available overview of the Description.
9. Neither the DMA nor the Template specify the timeframes within which the Gatekeeper shall publish the Overview following completion of the assurance engagement.
10. Personal information of assurance personnel would be disclosed. We expect that some qualified assurance personnel will be uncomfortable with this and may be reluctant to participate in these engagements.

Thank you for the opportunity to offer recommendations that can improve the Template and the assurance process. We also refer you to the annex of our [public submission](#) in respect of the Digital Services Act Draft Delegated Act on the performance of independent audits, which elaborates on some of the points we have raised.

If you have questions or would like to discuss our comments, please contact Pablo Zalba, Managing Director EU Policy Centre (pzalba@deloitte.com), or Mark Cankett, Global Lead for Internet Regulation Assurance (mcankett@deloitte.co.uk).

Yours Sincerely,

A handwritten signature in blue ink, consisting of a large, stylized 'P' followed by a horizontal line and a small flourish.

Pablo Zalba
Managing Director EU Policy Centre

A handwritten signature in blue ink, appearing to read 'Mark Cankett' with a stylized 'C' and 'k'.

Mark Cankett
Global Lead for Internet Regulation Assurance

ANNEX		
#	Issue	Solution
1	Neither the DMA nor the Template make it clear how frequently the audit of the Description must be carried out. It is possible to interpret that this audit is only required once, or that the audit should occur annually, or as and when the Description is updated in conjunction with DMA Art 15(3). This is an important point to clarify so that assurance providers and industry can prepare accordingly.	Stipulate the required frequency of the DMA audit requirement.
2	The timeline to audit is very short, potentially too short. The Template, which remains in draft form, has been published 6 months before the audit reports need to be completed. This leaves a highly challenging period of time for Gatekeepers to identify and engage an assurance provider that is both qualified and independent, and then, for the assurance provider to develop an audit approach and plan an audit based on the methodology provided by the Template and the internal systems within the Gatekeepers, complete all necessary audit field work, and prepare an audit report, while also leaving sufficient time for the Gatekeeper to prepare their Overview for publication (based on the results of the audit), taking account of the time required for appropriate company Governance and review by legal representatives. Noting that these audits should be to a standard of reasonable assurance, there is a serious risk that this timeframe is insufficient to produce audits that are reliable for the users of the audit reports.	Specify that the audit is point in time (see above, Solution 3), and that the appropriate level of assurance in 2024 is limited assurance, not reasonable assurance. Within the Template, establish a schedule for transitioning these audits from limited assurance in 2024 to reasonable assurance in 2025 and beyond.
3	The Template appears to be flexible as to the audit period. Section 4.2(b) requires the auditor to stipulate the observed period(s) which is subject to the audit of profiling techniques. There is a risk that, across the industry, some audit engagements will be approached as through the period, while some will be point in time. This substantially increases the risk that the audit reports are less comparable and less useful to the user.	Specify the audit period within the Template. We recommend that the Template include a provision that the audit should be point in time.

4	Assurance standards are designed to ensure consistent quality in the delivery of assurance engagements. However, no assurance standard is specified in the DMA or the Template. This increases the likelihood that different assurance providers may take different approaches to scoping and performing each engagement. Where assurance approaches differ, there is a risk that the audits across the industry become less comparable. Not specifying an assurance standard increases the likelihood that that no recognised standard is followed, which increases the risk that the audit reports are less reliable for the users.	Specify an international assurance standard that should underpin the performance of the audit engagements, such as ISAE 3000 (Revised) ¹ .
5	The Template does not make clear the role of the assurance provider in respect of the Overview. In particular, the Template does not clarify whether the Overview is within the scope of the audit. It is reasonably likely that the Overview prepared by each Gatekeeper will not align with the audited Description, especially if these Overviews are prepared at a level of abstraction that makes them accessible to the public. This creates a risk that the Overview publicly misrepresents the audited Description, and that the assurance provider is perceived as having audited the accuracy of the Overview, even though it has not.	Clarify the role of the assurance provider in respect of the Overview, especially if the Commission expects that the Overview itself will also be within the scope of the audit.
6	The opinion reporting framework does not align to international standards. The scenarios in which it is appropriate to issue a 'positive', versus a 'positive with comments', versus a 'negative' opinion are unclear. To be useful to the users, it is important that audit report allows assurance providers to reach a conclusion that fairly and accurately represents the underlying level of compliance. With many assurance providers unfamiliar with this reporting framework, there is a high risk that different assurance providers will apply different thresholds in determining which of these opinion labels to apply to the overall audit, resulting in audit reports that are less comparable across the industry and less useful to the users.	Align the reporting framework set out in the Template (Section 5.1) with the reporting framework of the chosen international assurance standard.

¹ ISAE 3000 (Revised), Assurance Engagements Other than Audits or Reviews of Historical Financial Information

7	The Template does not provide all necessary criteria against which to audit, ² and Section 2 relies on several complex terms and concepts that are not defined or explained. ³ Firstly, an audit or assurance engagement can only be carried out where suitable criteria are available, which in practice will mean that the management of each Gatekeeper will need to prepare its own criteria against which their Description assessed. This may lead to audit reports that are less comparable and less useful to the users. Secondly, there is a risk that Gatekeepers will interpret the technical concepts within Section 2 differently to the way the Commission interprets them, and as a result, produce audited Descriptions that do not address all the underlying subject matter that the Commission intended to be addressed.	Add supplementary guidance to the Template that can provide established criteria for the more subjective requirements, and provide clearer definitions of the key terms and concepts that underpin what information must be provided in the Description. Additionally, wherever Section 2 calls for a “detailed description”, provide clearer guidance on what detail the Commission expects, so that assurance providers and Gatekeepers have a consistent idea of what is sufficiently “detailed” to meet the regulator’s needs.
8	The Template does not specify what should be included in the Overview. There is a risk that the Overviews provided across the industry will vary greatly in their contents and level of detail.	Provide further guidance on what information and level of detail the Overview should contain, to facilitate consistency across the industry.
9	Neither the DMA nor the Template specify the timeframes within which the Gatekeeper shall publish the Overview following completion of the audit. Preparing this Overview for publication is likely to take Gatekeepers some time (potentially months in this first iteration). Practically, this work cannot take place until the Description has been audited. If the expectation of the Commission is that these Overviews shall be published within 6 months of designation as a Gatekeeper, then this will further reduce the available period within which to perform the audit in 2023/2024.	Specify the timeframe within which the Overview must be published by the Gatekeepers and whether this must occur within 6 months of the entity being designated a Gatekeeper, allowing for sufficient time in this first iteration of compliance.
10	Personal information of audit personnel would be disclosed. We expect that some qualified auditing personnel will be uncomfortable with this and may be reluctant to participate in these engagements. Information on the qualifications and experience of the different practitioners should be	Remove the requirement from the Template Section 3.1(a)(b) for disclosures in respect of the members of the auditing team. Disclosures about name, qualifications, domains of expertise, and descriptions of work should be made on a case-by-case basis, based on the judgment of engagement leadership within the auditing organisation.

² Criteria are the benchmark used to evaluate or assess the underlying subject matter. For introductory guidance, see, for example, <[Criteria](#) | [Assurance process](#) | ICAEW>.

³ For example: “consumer profiling techniques” (2.1); “purposes pursued” (2.1(a)); “retention” (2.1(e)); “technical safeguards” (2.1(e)); “processing” (2.1(g)); “automated decision-making” (2.1(h)); “algorithms” (2.1(h)); “impact” and “importance” (2.1(i)); “business operations” (2.1(i)); “alternative measures to profiling” (2.1(n)); “implemented” (2.1(n)); “considered” (2.1(n)).

	provided depending on the significance of the information to the report and the user's needs.	
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