

Mr. Roberto Viola
Director-General
DG CONNECT
European Commission
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15 September 2023

Public consultation on the draft Template Relating to the Audited Description of Consumer Profiling Techniques Pursuant to Article 15 of Regulation (EU) 2022/1925 (Digital Markets Act)

Dear Mr. Viola,

EY Europe SCRL/CVBA (EY) welcomes the opportunity to provide views on the European Commission's consultation on the draft template related to the reporting on consumer profiling techniques that designated gatekeepers will have to submit under Article 15 of the Digital Markets Act ('DMA').

Consistent with our feedback on the Digital Services Act (DSA), we support the Commission's invitation for feedback. We hope the feedback the Commission receives will help you to finalize the template and any accompanying clarifying guidance, so the compliance reports that are subsequently issued support the transparency, accountability and fairness the Commission seeks. It is in this spirit we have written this letter.

There are a number of areas in the draft template which could pose challenges for (i) DMA auditors seeking to comply with Article 15(1) of Regulation (EU) 2022/1925; and (ii) the ultimate users¹ of the DMA audit reports. Additional guidance will benefit gatekeepers as well as the professionals who may seek to perform independent audits under the DMA. We outline below two main areas of concern and set out suggestions about how these could be addressed.

1. Enable consistent performance of audits across gatekeepers by requiring auditors to use already recognized standards and frameworks

Sections 3, 4 and 5 of the draft template do not currently require a framework or standards for the DMA auditor to follow in conducting a reasonable assurance engagement. Absent mandating a framework, DMA auditors could apply different audit approaches, resulting in the potential for inconsistencies and audit reports of gatekeepers that lack comparability. This would undermine both

¹ For example, the Digital Markets Coordinators in Member States, the European Commission, academics, civil society, organizations and other stakeholders; not to mention the gatekeepers themselves

the effectiveness of the work undertaken as well as the ability of users² to compare different audits as part of effective oversight and transparency.

To address these issues, we strongly encourage the draft template to require auditors to choose and use transparently, where possible, a recognized and appropriate international standard such as the IAASB's ISAE 3000, 3402, the expected 2024 ISSA 5000³, or any other similarly internationally recognized and appropriate standard.

It is worth noting that the IAASB standards we cite are each designed to allow any professional⁴ using them to obtain reasonable assurance on subject matters other than historical financial information.

In new areas such as the DMA, building on existing international assurance standards, developed by recognized independent standard setters following due process, is foundational for providing confidence to users of DMA audit reports. While these standards establish robust guidance and a structure to the audit process, they also provide different DMA auditors with the flexibility to customize their audit procedures to the specific facts and circumstances. At the same time, these standards provide a base level of consistency in the assurance obtained by the DMA auditor, which is in the public interest in support of producing reports that will be comparable with one another. Such an approach is being explored in other areas of recent European Union ("EU") law, such as the assurance standards which will underpin the Corporate Sustainability Reporting Directive.

The common principles in internationally recognized standards also provide the benefit of influencing consistent disclosures by the gatekeeper. This allows users to compare reporting by both the gatekeeper and DMA auditor between different gatekeepers. Using such independently developed standards may also help users' understanding of the way the DMA auditor conducted the audit.

2. Promote reporting that balances providing sufficient transparency at the appropriate level of detail

Section 5.1 of the draft template sets out how the auditor has to report their conclusions on the information provided by the gatekeeper, including that described in Section 2 of the draft template. Section 5.1.a of the draft template adds further detail as to how the auditor should report their conclusions. Section 5.1a further requires the auditor to conclude at the description level.

The number and nature of profiling techniques will differ for each core platform service and may be extensive. Requiring the auditor to conclude on the description at an individual profiling technique description level will create a degree of detail and volume of reporting that could potentially detract from the objective of making the compliance reports understandable.

EY encourages the Commission to consider revising the template and clarifying the auditor's reporting requirements for profiling techniques are intended to be at an aggregated level for each core platform service of each gatekeeper. This would align with Section 4.1 of the template which says that such audit procedures could include a sampling approach over the profiling techniques observed. Further, it would still allow for the auditor to identify individual findings or exceptions at a more detailed level, or even at the level of the audit procedure performed, as laid out in Section 5.1. Such an approach can be found in the IAASB's standards (for example in a ISAE 3410 engagement).

² See footnote above

³ These standards may be used by any assurance provider; not only accountants and financial statement auditors. However, we recognize that assurance providers from outside the accounting profession may be more familiar with other standards such as those maintained by the International Organization for Standardization and may wish to use those instead. The draft template could provide for such optionality using general criteria for the choice of appropriate standards by the DMA auditor.

⁴ See footnote above. Anyone using them must also follow IESBA's International Code of Ethics for Professional Accountants (or other professional requirements that are at least as demanding) and work for an organization that is subject to the International Standard on Quality Management (ISQM) 1 (or other professional requirements regarding the organization's responsibility for its system of quality management that are at least as demanding as ISQM 1).

Conclusion

We are committed to the success of the DMA and the audits required under it. We would be happy to discuss our comments with European Commission staff at your convenience. Please address any correspondence regarding this letter to Andrew Hobbs, EMEIA Public Policy Leader (ahobbs@uk.ey.com).

This letter may be published. We have also submitted a response to the online consultation which attaches a copy of this letter.

EY is registered in the EU Transparency Register under reference 04458109373-91.

Yours sincerely,



Prof. Dr. Peter Wollmert

EY EMEIA Assurance Leader

cc: Prabhat Agarwal, DG CONNECT
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