

## Digital Markets Act: ARTICLE 19 proposed amendment to Article 13

21 May 2021

### ARTICLE 19's concerns about Article 13

Gatekeepers use automated systems to profile consumers and personalise the service provided to them. Requiring internal audits of how these automated systems (especially automated decision-making systems) are used by companies, including how they work and what criteria are used to set them, is a basic and necessary step towards greater accountability. Transparency can help rebalance the asymmetry of information among gatekeepers, other players and end-users.

However, ARTICLE 19 finds the scope of the audit mandated in Article 13 of the DMA too narrow to address concerns around transparency and users' rights. The majority of automated decision-making systems used by gatekeepers include at least three sets of activities: massive data gathering; user profiling; and personalisation of the service based on such profiling. Each of these raises challenges for end-users: massive data collection is, more often than not, in conflict with various [GDPR](#) rules, such as data minimisation and purpose limitation. The profiling too needs to comply with the GDPR and could additionally raise problems with non-discrimination rules. But it is within the personalisation element that the major challenges lie. Social media platforms or video sharing platforms are good examples here: on the one hand, personalisation can improve a user's experience by navigating them towards a variety of content that is relevant for them. On the other hand, there are legitimate concerns that, in the absence of transparency about recommender systems or algorithmic systems, personalisation could be used to influence, or even manipulate, a user's choices and behaviours.

Even if the DMA adopts a narrower economic perspective, the need for a wider scope for Article 13 remains. Gatekeepers use automated systems to distribute the value created in the markets according to rent maximisation criteria. These rents cement their position of power, and their extractive business model limits the redistribution of value among those that create it. A comprehensive auditing of those automated systems is thus a first necessary step if regulators want to remedy this situation. Additionally, we recommend clarifying the main parameters of the mandatory audit such as, *inter alia*, the independence of who is called to perform it, the scope, and the criteria to be used in the assessment.

## Proposed amendment

Current version	Proposed amendments
<p><b>Article 13</b></p> <p>Within six months after its designation pursuant to Article 3, a gatekeeper shall submit to the Commission an independently audited description of any techniques for profiling of consumers that the gatekeeper applies to or across its core platform services identified pursuant to Article 3. This description shall be updated at least annually.</p>	<p><b>Article 13</b></p> <p><b>1.</b> Within six months after its designation pursuant to Article 3, a gatekeeper shall submit to the Commission an independently audited description of any techniques for profiling of consumers <b>and personalisation of the service</b> that the gatekeeper applies to or across its core platform services identified pursuant to Article 3. This description shall be updated at least annually <b>and made available to the public.</b></p> <p><b>2. The Commission shall develop, in consultation with the EU Data Protection Supervisor, the European Data Protection Board, civil society and relevant experts, the standards and process of the audit.</b></p>