

Microsoft Audited Description Of Consumer Profiling Techniques Pursuant To Article 15 Of Regulation (EU) 2022/1925

DMA.100160 – Microsoft; DMA.100026 – Microsoft – Operating Systems; DMA.100017 – Microsoft – Online Social Networking Services

- Pursuant to Article 15 of Regulation (EU) 2022/1925 on contestable and fair markets in the digital sector – Digital Markets Act (“DMA”), Microsoft provides this independently audited description of any techniques for profiling of consumers that Microsoft applies to or across its operating system Windows PC OS and online social networking service LinkedIn, the core platform services (“CPSS”) for which Microsoft has been designated as a gatekeeper.¹

SECTION 1

General information on the gatekeeper

- Please provide the name and registered address of the undertaking submitting the present report.**

Microsoft Corporation
 One Microsoft Way
 Redmond, WA 98052
 United States of America

- Please provide the name(s), function(s), and contact details of the person(s) within the gatekeeper’s organisation who is or are responsible for preparing and submitting the independently audited description of applied consumer profiling techniques.**

| Name | Role within Microsoft |
|--------------------|--|
| Christopher Nelson | <ul style="list-style-type: none"> Head of DMA Compliance Function Associate General Counsel, Compliance & Ethics organization (C&E), Corporate, External and Legal Affairs (CELA) One Microsoft Way, Redmond, WA 98052 |
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¹ Commission Decision of 5 September 2023 designating Microsoft as a gatekeeper pursuant to Article 3 of Regulation (EU) 2022/1925 of the European Parliament and of the Council on contestable and fair markets in the digital sector, DMA.100017 Microsoft – online social networking services, DMA.100023 Microsoft – number-independent interpersonal communications services, DMA.100026 Microsoft – operating systems (“**Designation Decision**”), ¶¶44 and 157.

SECTION 2

Information about the profiling techniques of consumers

- 2.1 For each core platform service listed in the designation decision based on Article 3(4) or Article 3(8) of Regulation (EU) 2022/1925, provide a detailed description of all the consumer profiling techniques applied within the core platform service and across multiple core platform services including, at least, information about:**
- a) the specific purpose(s) pursued by each profiling technique(s);**
 - b) a description of each category of personal data and data derived from user activity (in particular, distinguish data and personal data categories actively provided by consumers² from observed data³) and sources (e.g., first or third party service) for each of these categories of data and a description of personal data processed for profiling consumers applied to or across the designated core platform services (in particular, distinguish data and personal data originating from each of the gatekeeper's services);**
 - c) a description of each category of personal data and data originating from third parties (in particular, distinguishing data and personal data originating from third parties, such as advertisers, publishers, developers, or others) and/or derived from user activity on third parties' services (in particular, distinguishing data and personal data categories actively provided by consumers from observed data and inferred data originating from third parties);**
 - d) a detailed description of the inferred data⁴ about consumers derived from the processing of the data and personal data listed in point (b) and/or (c) as well as an explanation of how such derived or inferred data were created;**
 - e) the retention duration of each category of data and personal data listed in points (b), (c), and (d), or duration of retention of the profile itself;**
 - f) the legal ground relied on by the gatekeeper under Article 6(1) and, where applicable, Article 9(2) of Regulation (EU) 2016/679. The reporting under**

² For example, profile information (e.g. age, sex, location and other) provided by consumers through any core platform service, or provided through any other service of gatekeeper, when this data is combined or cross-used with that of a core platform service.

³ Observed data are understood as data provided by the consumer by virtue of using a service or device. For example, data related to, or derived from, the activity of the consumer on the gatekeeper's core platform services or other services (e.g. the content that a user has consulted, shared, or liked) as well as data related to, or derived from, the use of devices on which the gatekeepers' core platform services or services are provided (e.g. GPS location).

⁴ Inferred data are understood as data derived by the gatekeeper from the processing of observed data or data actively provided by the consumer. For example, consumers' interests or socio-economic status. Further guidance on the distinction between provided data, observed data and inferred data, can be found in the European Data Protection Board's [Guidelines on the targeting of social media users](#).

the present point should distinguish the legal ground relied on under Regulation (EU) 2016/679 for the processing of personal data collected directly by the gatekeeper from the legal ground relied on for the processing of personal data originating from third parties;

- g) whether consent is required under Article 5(2) of Regulation (EU) 2022/1925 for the processing of data and personal data listed in points (b), (c) and (d) for each purpose of profiling consumers. The reporting under the present point should distinguish between consent under points (a) to (d) of Article 5(2) of Regulation (EU) 2022/1925. In addition, if consent is not required, the reporting under the present point should provide an explanation;**
- h) where consumer consent is required for the given purpose and obtained by the gatekeeper under Regulation (EU) 2016/679, Directive 2002/58/EC and/or Regulation (EU) 2022/1925, a description of any steps taken to seek such consent to profiling, including visual representations (click-by-click) on how consumers can refuse or withdraw consent, any consequences of such refusal or withdrawal, and how any such consequences are notified to the consumer;⁵**
- i) where consumer consent is required for the given purpose and obtained by third parties (e.g., as required under Article 5(2)(a) of Regulation (EU) 2022/1925), a description of any steps taken to seek consent to the sharing of personal data with the gatekeeper for the purpose of profiling, including visual representations (click-by-click) on how consumers can refuse or withdraw consent, and how the gatekeeper ensures respect of consumer's consent refusal or withdrawal;⁶**
- j) whether automated decision-making takes place on the basis of an applied profiling technique, the number and object of such automated decisions, the legal effects and other similarly significant effects⁷ that the automated decision-making mechanism is producing or may produce, and a description of the algorithms underpinning the automated decision mechanism;**
- k) qualitative and quantitative impact or importance of the profiling techniques in question for the services and business operations of the gatekeeper. Under this point, please also include information on the number of end users exposed to each profiling technique per year, and the number of business users using the gatekeeper's services based on**

⁵ It should be clear from the description what measures (e.g. in design) the gatekeeper takes to guarantee a neutral presentation of choices to the end user, and the level of facility or ease (e.g. how many clicks) for an end user to refuse or change their consent. The consequences of such refusal or withdrawal should also be clear from the description.

⁶ The gatekeeper should refer to a consent framework to which it adheres.

⁷ A decision produces legal effects when the subject's legal rights are impacted. This could include, for example, any resulting effect on their right to vote, their ability to take out a loan, and their position in e-recruitment.

profiling per year, within the core platform service and, where relevant, across multiple core platform services;

- l) actions taken to effectively enable consumers to be aware that they are undergoing profiling and the relevant use of such profiling;**
 - m) statistics on how many consumers choose to undergo profiling and how many refuse it, if such choice is given;**
 - n) whether and when the profiling technique has been the subject of a data protection impact assessment⁸ and the main conclusions thereof;**
 - o) any alternative measures to profiling that have been considered and the reasons for not choosing them.⁹**
2. Microsoft refers to **Annex 1** for information relating to profiling techniques of consumers for the Windows CPS.
3. Microsoft refers to **Annex 2** for information relating to profiling techniques of consumers for the LinkedIn CPS.

SECTION 3

General information on the auditors

- 3.1 Please provide the name of the auditor(s) or auditing organisation(s) which independently verified and audited the description submitted to the Commission by the gatekeeper, along with the name(s) and contact details of the overall responsible person(s) for submitting the audit conclusions. In addition, please provide:**
- a) the personal names and auditing organisation affiliations of all members of the auditing team;**
4. The Auditing Organization is Deloitte & Touche LLP (“**D&T**”). [CONFIDENTIAL].
5. All members of the auditing team were employees of D&T and its affiliates. [CONFIDENTIAL].
- b) an overview of the professional qualifications, certifications, and domains of expertise of the audit team as a whole;**
6. The auditing team consisted of individuals certified as Chartered Accountants, Certified Public Accountants, Certified Information Systems Auditors, Certified Information Systems Security Professionals, HITRUST Certified CSF Practitioners, and Cloud

⁸ A data controller must carry out a data protection impact assessment under Article 35 of Regulation (EU) 2016/679 in certain circumstances that may also involve profiling.

⁹ Asking for alternatives to profiling allows an assessment of whether gatekeepers have considered less intrusive measures and is particularly informative in terms of accountability.

Security Knowledge. The auditing team also included individuals with experience and knowledge in data science and data privacy regulations.

- c) **declarations of interests by each auditor(s) or auditing organisation which independently contributed to the preparation of the submitted description or independent audit and audit conclusions thereof, specifying in particular any relationship (including commercial or contractual) to the audited gatekeeper.**
7. D&T performs the audit of Microsoft’s annual consolidated financial statements, the review of consolidated financial statements included in Microsoft’s quarterly Form 10-Q reports, the audit of internal control over financial reporting, and the services that an independent auditor would customarily provide in connection with subsidiary audits, statutory requirements, regulatory filings, and similar engagements for the fiscal year, such as comfort letters, attest services, consents, and assistance with review of documents filed with the US Securities and Exchange Commission. In coordination with the consolidated financial statements, D&T performs procedures relating to accounting matters that arise in connection with or as a result of the audit or the review of periodic financial statements and statutory audits that non-US jurisdictions require in addition to audits of Microsoft’s employee benefit plans; due diligence related to mergers, acquisitions, and investments; additional revenue and license compliance procedures related to the performance of review or audit of Microsoft’s consolidated financial statements; third-party assurance audits for cloud services; and accounting consultations about the application of Generally Accepted Accounting Principles (“GAAP”) to proposed transactions and tax compliance and return preparation, and tax planning and advice.
- 3.2 If applicable, please provide the names of any third parties consulted by the auditor(s) or auditing organisation(s) and their contact points.**
8. No third parties were consulted by the Auditing Organization.
- 3.3 If there was, at any time, a change in appointed auditor(s) or auditing organisation, please provide the names and contact information for all previously appointed auditor(s) or auditing organisations.**
9. There was no change in the appointed Auditing Organization.

SECTION 4

Information about the audit procedures

- 4.1 Please provide a description of the audit procedures independently performed by the auditor(s) or auditing organisation(s), the methodologies used to perform the audit (including, where applicable, a justification for the choice of standards, benchmarks, sample size(s) and sampling method(s)). In particular, please provide references to any internationally recognised standards adhered to by the auditor(s) or auditing organisation(s) with respect to, among any other aspects:**
- a) **the audit team’s independence;**

10. D&T is required to be independent and to meet other ethical responsibilities in accordance with the Code of Professional Conduct established by the American Institute of Certified Public Accountants (“AICPA”) and the International Ethics Standards Board of Accountants’ Code of Ethics for Professional Accountants (including International Independence Standards). D&T has complied with those requirements. D&T applied the Statements on Quality Control Standards established by the AICPA and the International Standards on Quality Management issued by the International Auditing and Assurance Standards Board (“IAASB”) and, accordingly, maintains a comprehensive system of quality control.

b) the methodology or processes applied to carry out the audit; and

11. D&T’s examination was conducted in accordance with attestation standards established by the AICPA and with International Standard on Assurance Engagements 3000 (Revised), Assurance Engagements other than Audits or Reviews of Historical Financial Information (“ISAE 3000”), issued by the IAASB.
12. In the course of D&T’s examination engagement, D&T conducted an analysis of the external environment and gained an understanding of the CPSs for which Microsoft has been designated as a gatekeeper. This was achieved through inquiries with management and the inspection of relevant evidence. D&T also evaluated the appropriateness of the criteria used by Microsoft, including the consistent application and the accuracy of related disclosures in the description of the consumer profiling techniques.
13. D&T obtained an understanding of the internal control environment as it pertains to D&T’s examination engagement. It is important to note that this understanding was not sought for the purpose of expressing an opinion on the effectiveness of Microsoft’s internal controls. Instead, D&T’s focus was on identifying and assessing the risks related to the completeness and accuracy of the description of the consumer profiling techniques, whether these risks were due to fraud or error. In response to these risks, D&T designed and performed further assurance procedures to obtain evidence that is sufficient and appropriate to provide a basis for D&T’s opinion. These procedures may have included sampling, applied in accordance with the professional standards, and included, but were not limited to, performing inquiries of management responsible for the consumer profiling techniques, performing inquiries of relevant personnel responsible for providing and disclosing the data in the description, obtaining evidence to evaluate that the description reconciled with Microsoft’s underlying systems and procedures, and evaluating the reliability of the information provided by Microsoft. The information D&T used as evidence in its procedures included, but was not limited to, direct observations of system functionality, technical system specifications, public user disclosures, and internal privacy assessments. D&T evaluated the accuracy and completeness of this information and assessed whether it was sufficiently precise and detailed for their purposes.

c) any quality management standards for the audit.

14. As outlined in **Section 4.1 (a)** above, D&T is required to be independent and to meet other ethical responsibilities in accordance with the Code of Professional Conduct established by the AICPA and the International Ethics Standards Board of Accountants’ Code of Ethics for Professional Accountants (including International Independence Standards). D&T has complied with those requirements. D&T applied the Statements

on Quality Control Standards established by the AICPA and the International Standards on Quality Management issued by the IAASB and, accordingly, maintains a comprehensive system of quality control.

4.2 Please provide an overview and description of information relied upon as audit evidence, including, as applicable:

- a) **a description of the type and source of audited information;**
15. The information D&T used as evidence in its procedures included, but was not limited to, direct observations of system functionality, technical system specifications, public user disclosures, and internal privacy assessments.
- b) **the observed period(s) which is subject to the audit into profiling techniques. (N.B: For the first audited description due six months after designation, the observed period should be the ‘point in time’ two months prior submission of that first audited description);**
16. D&T performed the examination engagement between 11 December 2023 and 29 February 2024, in order to express an opinion on Microsoft’s description of the consumer profiling techniques as of 6 January 2024, set forth in Sections 2.2.1 to 2.2.15 of Annex 1 and Sections 2.1 to 2.15 of Annex 2.
- c) **the period(s) when the audit was conducted;**
17. As outlined in Section 4.2 (b) above, D&T performed the examination engagement between 11 December 2023 and 29 February 2024, in order to express an opinion on Microsoft’s description of the consumer profiling techniques as of 6 January 2024, set forth in Sections 2.2.1 to 2.2.15 of Annex 1 and Sections 2.1 to 2.15 of Annex 2.
- d) **any other relevant information.**
18. Microsoft’s management (the “**Management**”) is responsible for establishing suitable criteria, which are provided in the assurance reports that are available to recipients of those reports. The Management is also responsible for presenting complete and accurate descriptions of its consumer profiling techniques applied to its CPSs as of 6 January 2024, in accordance with those criteria. Finally, the Management is responsible for designing, implementing, and maintaining internal control over information relevant to the preparation of the descriptions of its consumer profiling techniques that are free from material misstatement, whether due to fraud or error.
19. The nature, timing, and extent of the procedures selected depend on D&T’s judgment, including the assessment of the risks of material misstatement of Microsoft’s description of the consumer profiling techniques applied to the CPSs as of 6 January 2024, as detailed in Sections 2.2.1 to 2.2.15 of Annex 1 and Sections 2.1 to 2.15 of Annex 2, whether due to fraud or error.
20. The description of consumer profiling techniques applied to the CPSs is subject to inherent uncertainty. The services in the digital sector and the types of practices relating to these services can change quickly and to a significant extent. Therefore, projections of any evaluation to future periods are subject to the risk that the consumer profiling

techniques may have been changed. Obtaining sufficient appropriate evidence to support D&T's opinion does not reduce the inherent uncertainty.

21. D&T's reports solely address completeness and accuracy of the description of consumer profiling techniques applied to the CPSs in Sections 2.2.1 to 2.2.15 of **Annex 1** and Sections 2.1 to 2.15 of **Annex 2**. D&T did not assess if Microsoft has implemented other profiling techniques not identified by the Management, and therefore, does not express an opinion on whether all of the profiling techniques used by Microsoft are included in the descriptions in Sections 2.2.1 to 2.2.15 of **Annex 1** and Sections 2.1 to 2.15 of **Annex 2**.
22. D&T did not develop any conclusions related to legal evaluations made by the Management, and therefore, does not express an opinion, or any other form of assurance on whether the legal determinations made by the Management are appropriate.
23. Information outside of Sections 2.2.1 to 2.2.15 of **Annex 1** and Sections 2.1 to 2.15 of **Annex 2** was not subject to D&T's examination and, accordingly, D&T does not express an opinion or any form of assurance on such information. Further, any information relating to periods prior to 6 January 2024, or information relating to forward-looking statements was not subject to D&T's examination and, accordingly, D&T does not express an opinion or any form of assurance on such information.
24. D&T noted that their reports are intended solely for the use of the Management for the purpose of assisting Microsoft in submitting the content in this report to the Commission and are not to be used for any other purpose. D&T also indicated that they expressly disclaim any liability or duty to any other party for the content in these reports. Finally, D&T noted that these reports should be directly inspected to correctly understand the assurance they provide.

4.3 Please provide a detailed description of any data sources of potential relevance to information required under Section 2 that were not included in the scope of the audit, in particular:

- a) **detailed reasons for non-inclusion;**
 - b) **details on any steps taken to mitigate the consequences of non-inclusion of such data on the completeness and accuracy of information provided in Section 2 as well as audit conclusions and recommendations.**
25. D&T requested and was provided all data that was considered relevant to perform the examination.
 - 4.4 Please elaborate on any circumstances that could have prevented the audit organisation from performing with a reasonable level of assurance the audit of one or more of the techniques applied for the profiling of consumers.**
 26. There were no circumstances that prevented D&T from performing an examination with a reasonable level of assurance regarding the consumer profiling techniques.

SECTION 5

Audit conclusions

5.1 Please provide the assessment of the auditor(s) or auditing organisation(s) as to whether, with a reasonable level of assurance, the information provided by the gatekeeper in the description is complete and accurate, in view of the information requirements laid down in Section 2 of this template. In particular, the auditor(s) or auditing organisation(s) should provide:

a) an assessment of “positive”, “positive with comments”, or “negative”, as to whether the description provided is based on sufficient and appropriate evidence provided by the gatekeeper; and

27. D&T provided reports to Microsoft that included an unqualified opinion, as that term is defined by AICPA attestation standards. An unqualified opinion is allowed when the conditions for a qualified, adverse, or disclaimed opinion are not present. This is described in AT-C Section 205, *Assertion-Based Examination Engagements*, ¶¶70-77, as follows:

“.70 The practitioner should modify the opinion when either of the following circumstances exist and, in the practitioner’s professional judgment, the effect of the matter is or may be material: (Ref: par. .A113–.A114)

a. The practitioner is unable to obtain sufficient appropriate evidence to conclude that the subject matter is in accordance with (or based on) the criteria, in all material respects.

b. The practitioner concludes, based on evidence obtained, that the subject matter is not in accordance with (or based on) the criteria, in all material respects.

.71 When the practitioner modifies the opinion, the practitioner should include a separate paragraph in the practitioner’s report that provides a description of the matter giving rise to the modification.

.72 The practitioner should express a qualified opinion when either of the following applies: (Ref: par. .A115–.A119)

a. The practitioner, having obtained sufficient appropriate evidence, concludes that misstatements, individually or in the aggregate, are material, but not pervasive to the subject matter.

b. The practitioner is unable to obtain sufficient appropriate evidence on which to base the opinion, but the practitioner concludes that the possible effects on the subject matter of undetected misstatements, if any, could be material but not pervasive.

.73 When the practitioner expresses a qualified opinion due to a material misstatement of the subject matter, the practitioner should state that, in the practitioner’s opinion, except for the effects of the matter or matters giving rise to the modification, the subject matter is in accordance with (or based on) the criteria,

in all material respects. When the modification arises from an inability to obtain sufficient appropriate evidence, the practitioner should use the corresponding phrase "except for the possible effects of the matter(s) ..." for the modified opinion.

.74 The practitioner should express an adverse opinion when the practitioner, having obtained sufficient appropriate evidence, concludes that misstatements, individually or in the aggregate, are both material and pervasive to the subject matter.

.75 When the practitioner expresses an adverse opinion, the practitioner should state that, in the practitioner's opinion, because of the significance of the matter or matters giving rise to the modification, the subject matter is not in accordance with (or based on) the criteria, in all material respects.

.76 If the practitioner has concluded that conditions exist that, individually or in combination, result in one or more material misstatements based on the criteria, the practitioner should modify the opinion and express a qualified or adverse opinion directly on the subject matter, not on the assertion, even when the assertion acknowledges the misstatement.

.77 The practitioner should disclaim an opinion when the practitioner is unable to obtain sufficient appropriate evidence on which to base the opinion, and the practitioner concludes that the possible effects on the subject matter of undetected misstatements, if any, could be both material and pervasive. (Ref: par. .A120)"

- b) **detailed justifications for the assessment in paragraph (a) and any comments concerning potential misstatements, omissions, misrepresentations, or errors that may have a material effect on the completeness or accuracy of the information required in Section 2.**
28. **Section 4** above provides information about inherent limitations, restrictions on report use, and management responsibilities.
29. D&T's reports are provided at **Annex 3** for the Windows CPS and **Annex 4** for the LinkedIn CPS.

SECTION 6

Non-confidential overview

- 6.1 Please provide the text, or a reference to the publication, of a detailed, clear, and comprehensive non-confidential overview of the audited description of each profiling technique of consumers applied to or across core platform services listed in the designation decision. The non-confidential overview should enable third parties to obtain an adequate understanding of those profiling techniques and, consequently, to provide meaningful input on them to the Commission. To this end, the overview should constitute a fair representation of the description, while allowing the gatekeeper, where appropriate, to summarise and omit information from the description, including in order to protect business secrets or information that is otherwise confidential. The gatekeeper is required to make this non-**

confidential overview publicly available in line with the requirements in Article 15(3) of Regulation (EU) 2022/1925.¹⁰

- 6.2 The public, non-confidential overview referred to in Section 6.1 shall be updated at least annually, in line with – and to reflect - the update of the information provided under Sections 1 and 2.**
30. As a courtesy copy, Microsoft provides also the non-confidential overview of this consumer profiling report to the Commission.

¹⁰ For further guidance on the type of information which can be considered as “*business secrets and other confidential information*” that the gatekeepers can take into account, please refer to the Commission’s guidance in relation to antitrust and mergers procedures: https://ec.europa.eu/competition-policy/document/download/ea2cbf27-412c-4394-b872-dd4b4e3a840b_en; https://competition-policy.ec.europa.eu/system/files/2021-03/guidance_on_preparation_of_public_versions_mergers_26052015.pdf.

SECTION 7

Declaration

Microsoft Corporation declares that, to the best of its knowledge and belief, the information given in this submission is true, correct, and complete, that all estimates are identified as such and are its best estimates of the underlying facts, and that all the opinions expressed are sincere.

Name: Christopher Nelson

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Position: Associate General Counsel / Head of DMA Compliance Function

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Date:

Signature:

DocuSigned by:

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