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NOTE

From: Presidency
To: Delegations

Subject: Presidency Flash

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WP COMPCRO (Internal Market) – DSA

Dear Colleagues,

After the two meetings of our CompCro Working Party in September, dedicated to the first three chapters of the second redraft, we could conclude that the meetings have been successful. There seem to be relatively few differences of views of Member States, and we are convinced that even those are reconcilable. This fills us with optimism for the preparation of a third compromise text, which would be acceptable for the vast majority of Member States.

Now, we will continue with our work to finish the examination of the second redraft in the next three meetings, scheduled for on 23 and 30 September and 7 October.

As we are all aware, the rest of the third Chapter will be a harder nut to crack in order to overcome the differences and to reach a political agreement. However, we still believe that if we all continue with the constructive approach and willingness to negotiate, we will be able to agree on an acceptable final compromise text.

Against this background, we have put on the agenda of our Working Party meeting of **23 September** the presentation of and the discussion on the following articles and corresponding recitals:

1. Chapter III, Section 3a, Articles 24a – 24c and recitals 49, 50, 50a
(Online marketplaces)
2. Chapter III, Section 4, Articles 25 – 33 and recitals 53 – 65a
Chapter I, Article 2, point (ma)
(VLOPs)
3. Chapter III, Section 4, Article 33a, and recitals 53 – 65a
Chapter I, Article 2, point (mb)
Chapter II, Article 4
(Online search engines)
4. Chapter III, Section 5, Articles 34 – 37, and recitals 66 – 71
5. AOB

Accompanying this flash, you should have already received our latest compromise text in doc. ST 11459/2/21 REV 2.

As usual, for every topic, we intend to open the floor for discussion. Delegations are encouraged to take the floor to react to the proposed compromise solutions. We would kindly ask you to focus your interventions on the newly introduced changes and to identify the elements that are not acceptable for you.

For a more focused discussion, we would kindly ask you to recall the latest changes, and how they reflect the previous discussions and your written submissions. In relation to the agenda items, here are some starting points to help you steer your interventions:

- **Add 1:** For online marketplaces as discussed in the Working Party meeting on 15 July, the delegations seemed to be divided between those who wanted to stick to the Presidency compromise text or return to the Commission proposal, and those who wanted to go much further. In order to find an acceptable compromise, and also with a view to the future dialogue discussions, the Presidency proposes a revised compromise, based on the text prepared by the Portuguese Presidency: a narrower scope (excluding consumer platforms), combined with targeted additions in 24b(1) and (2) aiming at increasing the responsibility of online market places. These changes should also be read in conjunction with Article 5 on hosting, which was subject to our previous discussions.

You are invited to answer the following two questions in your intervention:

- 1. Do you agree with the new compromise text?**
- 2. If not, what margin of flexibility do you have on these provisions?**

- **Add 2:** For the VLOP section, the new compromise text contains more explicit text: on how to calculate active users (supported by a new definition); a 24h/48h timeline for assessing trusted flagger notices; additional obligations to mitigate systematic risks for minors; a substantially revised provision on data access for researchers; and detailed provisions on compliance officers for VLOP inspired by similar provisions from the banking sector.

You are invited to answer the following questions in your intervention:

- 1. Do you agree with the inclusion of average processing timelines for trusted flagger notices for VLOPs? If yes, what should the timeline be?**
- 2. Do you agree with including elements on child protection in Article 27?**
- 3. Do you agree with the refinement of the data access provision in Article 31?**
- 4. Do you agree with the expanded obligations for compliance officers in Article 32?**

- **Add 3:** For Online Search Engines, we have built on the discussion of 20 July where many Member States expressed their support for an explicit inclusion of online search engines in the scope of the DSA. Based also on your written comments, we now propose to include online search engines with more than 45 million users to the entire Section 4 of Chapter III, to put them on the same level as VLOPs (with the exception of

timelines). For the sake of legal clarity, the liability exemption of all online search engines is clarified under Article 4, reflecting the closest technical analogy to the operation of search engines.

You are invited to answer the following question in your intervention:

1. Do you agree with the proposed way of including online search engines in the scope of the DSA?

- **Add 4:** The discussions on Section 5 of Chapter III as well as your written comments on these articles indicate that there is a strong degree of consensus among Member States on these Articles.

You are invited to address the following in your intervention:

1. You are invited to confirm your agreement to the proposed compromise text for Section 5, or – alternatively – submit limited final drafting suggestions that you consider essential.

To be able to achieve our ultimate goal of reaching General Approach, you are kindly reminded that the only possible way towards final compromise text is your continuous constructive approach to our discussions and your willingness to seek mutually acceptable solutions.

Due to a heavy agenda prepared for the meeting of 23 September, we might need to continue the discussion on Chapter III on 30 September. The examination of Chapters IV and V will then follow in the CompCro WP meeting on 7 October. The texts for the October meeting will follow in due time.

Best regards,

The DSA Team, 