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WORKING PAPER

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From:	Presidency
To:	Working Party on Competitiveness and Growth (Internal Market)
Subject:	Presidency Flash

Working Party CompCro (Internal Market) - Platform to Business Regulation

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PRESIDENCY FLASH

Dear Colleagues,

The Austrian Presidency is pleased to invite all delegations to the upcoming Competitiveness and Growth (Internal Market) Working Party meeting on the Regulation for Platform-to-Business Relations that will be held on 2 October 2018.

During this Working Party, we will present and discuss the new Presidency compromise text on **Articles 5-12**. In order for you and your colleagues in the Capitals to already have a better understanding of our amendments in advance, we have briefly summarised these below:

Article 5, Recitals 17-18 (Ranking)

Several MS have declared themselves in favour of aligning the Ranking-related provisions for online intermediation services (OIS) and online search engines (OSE). Under the terms of the Presidency compromise text, OSE shall now also:

- set out the reasons for the relative importance of the main parameters determining ranking in their description;
- include in that description the information on the possibility to influence ranking against any direct or indirect remuneration paid by corporate website users.

In addition, by means of a contribution made by the EC, an explanation of how the term 'ranking' as well as 'remuneration' should be understood has been added to Recital 17.

Article 6, Recital 19 (Differentiated treatment)

In the Working Party on 7 September 2018 there seemed to be a lack of clarity with regards to how the words 'at least' in Art. 6 Para 2 should be understood and whether or not MS shall have the possibility to enact further stipulations concerning the description of differentiated treatment. Keeping in mind that this Regulation shall be directly applicable in all MS, we have added an explanation in Recital 19 that aims at clarifying that it shall remain up to the providers of OIS themselves - and not the MS - to decide whether or not these descriptions should be expanded.

Article 7, Recital 20 (Access to data)

See explanations regarding Article 6 above (to be read analogously).

Article 8, Recital 21 (Restrictions to offer different conditions through other means)

As already indicated in previous Working Parties, it would make most sense to establish the Regulation's relation to national law and other acts of Union law in Art. 1 (Subject-matter and scope). The amendments in Art. 8 will therefore be fully addressed in the next Working Parties on 11 and 12 October. Nonetheless, as we are aware of the sensitivity of this issue, we wish to give all delegations the opportunity to provide preliminary comments in the upcoming Working Party on 2 October.

Article 9, Recitals 22-23 (Internal complaint-handling system)

While some MS have demanded a complete deletion of Art. 9 Para 4, several MS have pointed out that having information on the functioning and effectiveness of internal complaint-handling systems can be of great value - i.e. to the Observatory. Our amendments aim at striking a balance between, on the one hand, keeping the administrative burden for providers of OIS as low as possible and, on the other hand, ensuring access to valuable information on the functioning of internal complaint-handling systems.

Article 10, Recitals 24-25 (Mediation)

As requested by several MS, we have introduced the same SME-exemption as in Art. 9. In addition, we have emphasised the voluntary nature of mediation in Recital 24. In order to avoid the terminology 'alternative dispute resolution', we have also slightly changed the definition of mediation in Art. 2 Para 11.

Article 11, Recital 26 (Specialised mediators)

No amendments have been made.

Article 12, Recital 27 (Judicial proceedings by representative organisations or associations and by public bodies)

The system behind Art. 12 has been the subject of intense discussions and - based on our assessment - has led to some confusion in the Council. In the last Working Party on 14 September, several MS emphasised their wish to go back to the original EC-proposal. This would mean (Re-)instating a set catalogue of criteria for organisations and associations.

This concept implies, however, that a court would have to assess on a case by case basis whether or not the suing organisation or association is entitled to do so based on the respective criteria.

The possibility of abuse is a big concern relating to this 'ad-hoc assessment system' of Art. 12. This is why we have introduced an option in Art. 12 Para 2b and 2c through which MS may - but are not bound to - notify to the EC certain organisations, associations and public bodies that shall in any case be granted the right to bring an action under Art. 12 Para 1. The EC shall publish a list with these in the OJ of the EU to help with ensuring a certain level of legal certainty and predictability.

Courts/administrative authorities in the MS would nonetheless be able to examine whether the purpose of the organisation, association or public body justifies its taking action in a specific case. We note that the system of the Injunctions Directive has served as our source of inspiration for the structure of this provision.

The new Presidency compromise text for Articles 5-12 with their corresponding Recitals will most likely be uploaded to the Delegates Portal by 26 September. Please note that this version will not yet include amendments to the remaining Articles 1-4 and 13-15. These will be published in a new document. As usual, we will provide you with all necessary information in a separate Presidency Flash.

We hope the explanations above are able to help you gain a preliminary insight into our amendments. We look forward to seeing you all on 2 October for another in-depth discussion!

Presidency Team for Internal Market (P2B),

Max, Tobias, Kevin