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WORKING PAPER

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From:	LT and EE Delegations
To:	Working Party on Competitiveness and Growth (Internal Market)
Subject:	Joint written comments of Lithuania and Estonia on the Platform-to-Business Regulation

Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
on promoting fairness and transparency for business users of online intermediation services

Joint Comments of the Republic of Lithuania and the Republic of Estonia

Recital 5

We would be in favor of keeping the deleted part of the last sentence, i.e. “In addition, the full realization of that potential is hampered, and the proper functioning of the internal market is negatively affected, by diverging laws of certain Member States which, with a varying degree of effectiveness, regulate those services, while other Member States are considering adopting such laws”. It provides for the link with the TFEU article 114, which is the legal basis of the Regulation.

Recital 12

We do not agree with the extension of the scope of the Regulation to individually negotiated contracts. We do not see the reason to reject the possibility for business users to negotiate for individual terms and conditions if they are able to.

Recital 15

We find the reference to national law in the last sentence confusing and unclear.

Article 1

We believe the regulation should be focused on fact-based problem solving. Judging by the impact assessment, the main purpose of this Regulation is to address transparency and fairness problems in relations between platforms and business users, where platforms are gatekeepers to certain markets. New and small platforms are never gatekeepers and they already struggle to survive, so adding more legal requirements would discourage businesses in the EU from establishing new platforms. This will only have negative effects on the competitiveness and innovativeness of the sector. We should also take into account the fact that legislation for unfair commercial practices normally is based on resolving sector’s misbalances and is directed to economic enterprises that have significant market power, as they can impose certain conditions to smaller economic operators which do not have enough market power to negotiate it. We believe that it is important to keep the same approach here and not regulate the platform sector altogether.

Thus, we propose to add new paragraphs, stating that the Regulation shall apply to providers of online intermediation services and providers of online search engines that have a significant digital presence in the EU:

“3. The Regulation shall apply to providers of online intermediation services and providers of online search engines that have a significant digital presence in the Union.

4. A 'significant digital presence' shall be considered to exist if one or more of the following conditions is met with respect to the supply of those services by providers of online intermediation services and providers of online search engines, taken together with the supply of any such services through an online interface by each of these providers’ associated enterprises in aggregate:

(a) the proportion of total revenues obtained in a calendar year and resulting from the supply of those services to business users and corporate website users exceeds EUR [70 000 000];

(b) the number of active users of online intermediation service or the number of corporate website users of online search engine service in a calendar year exceeds [1 000 000];

(c) the number of business user contracts for the supply of any such service that are concluded exceeds [30 000] or the number of affiliates exceeds x (*point to discuss*).”

Also we support SK drafting suggestion for the Article 1 (see WK 10600/2018 INIT).

Article 2

We do not agree with the deletion of words “*and are unilaterally determined by the provider of online intermediation services*” in para. 10. In our view, this deletion places on scope even those terms and conditions that are not unilateral, i. e. the negotiated ones. We do not see the reason for that (as stated in arguments on recital 12).

Article 4

EE suggestion:

We do not support the inclusion of “at least [x] days before that decision enters into effect”, in the text unless the list of exceptions in paragraph 3 is broadened. The Regulation already sets a number of requirements to the Terms and Conditions with the aim of being unequivocally understood by business users. Serious breaches of contract therefore should not be given ‘mercy time’, especially given the potential negative impact to consumers and the platform concerned.

LT suggestion:

Acknowledging the fact that there are situations when it is crucial to terminate business user’s account due to public safety and similar issues, we would support the extension of the list of reasons in para. 3.

Article 5

“The reasons for” the relative importance of the main parameters in paragraph 2 should be deleted as it might reveal too much about the ranking algorithms.

Article 10

In some cases, especially in smaller Member States, even one mediator could be difficult to find. So we do not agree with the proposal to identify *two or more* mediators.

We support the exemption for small enterprises.

Article 12

We are still in discussions with our Ministries of Justice on this.