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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 four meetings of our CompCro Working Party in September, we still have to examine the final Chapters IV and V of the second redraft of the DSA proposal (*doc. 11459/3/21 REV 3*).

Our September's discussions on a couple of important issues concluded positively, despite the first political assessment that finding a compromise would be quite demanding. Thanks to your constructive approach in favour of reconcilable compromises, we are now equipped with information needed for the preparation of the third redraft. Sincere thanks to the delegations for your open cooperation and written comments.

There are relatively few differences of views of Member States remaining, which fills us up with optimism for finding mutually acceptable solutions on time for the General Approach at the COMPET Council on 25 November.

To be able to make considerable progress on the final text of the DSA proposal, we have prepared a dense schedule of seven Working Party meetings in October.

In order to finish the examination of the second redraft, we would like to invite you to our next two meetings on **7th** and **11th October** respectively, which will be fully dedicated to:

- Chapters IV (Implementation, cooperation, sanctions and enforcement) and
- Chapters V (Final provisions).

Against this background, we have put on the agenda of our Working Party meeting of **7 October** the following articles and corresponding recitals:

1. Chapter IV, Section 1, Articles 38–46b, and recitals 72–87
(Competent authorities and national digital services coordinators)
2. Chapter IV, Section 3, Articles 50–66a, and recitals 94–101a
(Supervision, investigation, enforcement and monitoring in respect of very large online platforms or very large online search engines)
3. AOB

We would like to focus the discussion on the newly introduced changes in these sections, in particular in the following articles of our compromise text, where substantial changes are proposed:

Add 1: Chapter IV, Section 1 (Competent authorities and national Digital Services Coordinators):

- Article 39 on requirements for Digital Services Coordinators.
- Article 44 on activity reports.
- Article 44a, introducing a new procedure for mutual assistance.
- Article 45, introducing important changes to the cross-border cooperation mechanism to clarify the role of Digital Services Coordinators of destination and to ensure that the Commission can take over a case against a VLOP/VLOSE.
- Articles 46 and 46a, fleshing out and specifying the procedure and requirements to initiate and conclude joint investigations at the initiative of the Digital Services Coordinator of establishment, the Board or the Commission (in case of VLOP/VLOSE).
- Article 46b, partially replacing previous Article 45 on the intervention by the Commission and allowing 3 Digital Services Coordinators of destination, via the Board, to request directly the intervention by the Commission in the case of serious harm – without the need to launch the mechanism of cross-border cooperation in joint investigations.

Add 2: Chapter IV, Section 3 (Supervision, investigation, enforcement and monitoring in respect of VLOPs or VLOSEs):

- Article 50, eliminating potential “deadlocks” by allowing the Commission to take over a case related to Section 4 of Chapter III (applicable only to VLOPs and VLOSEs) if it disagrees with the assessment of the Digital Services Coordinator of establishment. This article also re-introduces (with certain modifications) the requirement for a second audit.
- Article 51, adapting the different situations where the Commission may open proceedings against VLOPs or VLOSEs.
- Articles 52-66, including several adaptations to add VLOPEs in the scope and to align the text with the parallel changes proposed by the Presidency in the Digital Markets Act proposal.
- New Article 66a, replacing Article 63(6) to clarify that the rules of professional secrecy bind the Commission, the Board and the officials of national competent authorities.

We have put on the agenda of our Working Party meeting of **11 October** (afternoon only) the following articles and corresponding recitals:

1. Chapter IV, Section 3 (possible continuation)
(Supervision, investigation, enforcement and monitoring in respect of very large online platforms or very large online search engines)
2. Chapter IV, Section 4, Articles 67 and 68, and recitals 101a, 101b,
(Common provisions on enforcement), as well as Chapter V, Articles 71–74, and recitals 102-107
(Final provisions)
3. AOB

Add 2: Chapter IV, Section 4 (Common provisions on enforcement):

- Article 67, clarifying that other competent authorities may also have access to the information sharing system.

Add 3: Chapter V (Final provisions)

- Article 73, introducing a specific request to take into account the exemption of obligations for small and micro enterprises when evaluating the Regulation.

We believe that the proposed changes meet the expectations of those delegations which do not want to see the “country-of-establishment principle” compromised, but also of those which asked for a greater involvement of the Commission and the Digital Services Coordinators of destination to avoid potential “deadlocks” in the enforcement of the Regulation.

By its nature, a compromise means concessions by all delegations. However, we would like to emphasize that we remain committed to finding the best possible compromise. We all aim for a DSA regulation that is enforceable in real life. Perfectly written provisions on the paper do not necessarily mean perfect implementation in practice. In order to help us obtain best possible results, we kindly ask you to answer to following questions in your oral interventions:

- a) Do you agree on the main principles suggested in the compromise?**
- b) As far as VLOPs/VLOSEs supervision is concerned, should the Commission be entitled to take investigatory or enforcement measures on VLOPs/VLOSEs without prior intervention of the DSC of establishment?**
- c) Would Member States agree to give the power to the Commission to directly launch an enhanced supervision mechanism as described in Article 50 when the Commission has reasons to suspect an alleged infringement? If yes, under which conditions?**

Accompanying this flash, you have already received our latest compromise text in doc. ST 11459/3/21 REV 3.

All delegations are encouraged to take the floor to react to the proposed compromise solutions. We kindly ask you to focus in your interventions to the key changes introduced in the text.

We now hope to gain the support of delegations to conclude this round so that the Competitiveness Council can reach General Approach at the November meeting.

Best regards,

The DSA Team, [REDACTED]