AK – Prinz Eugen-Strasse 20-22, 1040 Vienna

European Parliament own-initiative report on the Digital Services Act

Dear Members of the European Parliament,

in its work programme, the European Commission has announced the publication of a legal proposal on digital services before the end of this year. From the point of view of the Austrian Federal Chamber of Labour (BAK), such a legal proposal is urgently needed and has been overdue for years.

Some of the legal standards currently applied to online platforms and other digital services were adopted 20 years ago and fall far short from meeting the minimum requirements for the digital world in terms of the employment, social affairs, consumer protection, tax and competition policy.

The BAK therefore expressly welcomes the fact that the European Parliament is already addressing the question of which aspects should be included in the planned legal act on digital services. From the BAK's point of view, the law on digital services must in any case include the following content:

General remarks

Online platforms affect everyone: numerous players are regularly involved in digital services: For example, companies from the traditional and digital sectors, consumers, employees and public authorities. Binding rules are necessary to ensure fair competition on the traditional and digital markets and to prevent individual players from being overcharged.

Country of destination principle instead of country of origin principle: It must be ensured that in the case of digital services, the regulations apply in the country in which the digital company is economically active. This is the only way to avoid a ruinous European location race. A lack of regulations creates unjustified privileges for the digital industry - for example in the areas of employee protection, labour law, consumer protection, tax law or transport services at the expense of all other actors.

Take action against the precarisation of employees on digital platforms: Many platforms refuse to recognize employer status. Basic labour rights are thus called into question. Work for platforms must not lead to a systematic undercutting of national legal minimum wages and collective agreement wages, which is often the case at present. Working conditions must be designed in a humane manner, and mental and physical performance must not be overtaxed. The recognition of these basic principles must also be enshrined in the Digital Services Act.

Tax and duty obligations may no longer be circumvented: Particularly in the case of international digital corporations, it can be observed time and again that they do not pay their taxes in the country in which they are economically active, but switch to other countries with lower or no taxation. In addition, some platforms refuse to exchange data with authorities, which is necessary to collect due duties and taxes. The new law on digital services must ensure that online platforms also pay their fair share of taxes and that traditional companies are no longer disadvantaged by the current status quo.

Consumer protection standards must be strengthened

- **Transparency regulations for rankings:** Corresponding regulations (regarding parameters and weighting) exist for online marketplaces (Revision RI 2005/29 EG) and search engines (VO 2019 /1150 EG), but not for other platforms. It is unclear, for example, according to which rules news feeds and similar are sent to the addressees.

- **Uniform regulation of online advertising:** very general rules (mainly labelling requirements) are currently contained in the e-Commerce Directive. The revised Audiovisual Media Services Directive contains much more detailed provisions on the regulation of advertising. For the first time, internet platforms such as YouTube are included in the scope of application. However, many platforms that do not contain dominant audiovisual content are not included. A uniform, strict level of regulation is therefore required regardless of the sites on which advertising is played. From the consumer's point of view, regardless of the content offered on the website or app, there is always the same need to be protected against non-transparent, aggressive advertising that is harmful to health, the environment or young people. Since advertising for dubious, fraudulent services is becoming increasingly prevalent, the responsibilities in the chain of advertising service providers and platforms must be clarified. Since the platforms are involved in the marketing practices of online advertising by means of behavioural profiles of their users and a share in the advertising revenues, they should be strongly held accountable for illegal advertising. They should provide tools for the clear identification of advertising, which advertisers must use to comply with the principle of separation. They should be required to carry out automated advance checks on advertising for obvious illegalities (e.g. fake shops, advertising for pirated copies, advertising that distributes malware). In contrast to other content, there is hardly any risk that information and personal rights protected by fundamental rights will be violated in the case of advertising content.

- **Good regulatory approaches of the platform to business Regulation, which protects thirdparty providers on platforms, should also apply to consumers:** for example, disclosure of blocking reasons (Art 3/1c and Art 4): it would also make sense to apply them to private individuals (as in case of online auctions, social media and private app developers towards stores). The explanation of the effects of a differentiated treatment of own goods and those of co-applicants (Art 7) would also have to be disclosed to consumers. The type and scope of data access by the intermediary service and by third-party providers (Art 9) should also be explained to consumers. Shortcomings can currently be observed here, for example, in appstores that only refer to the data protection declarations of the respective developers.

- **Ensure net neutrality at platform level:** Platforms with gatekeeper functions need specifications in order to safeguard the obligation of "net neutrality", which already applies to Internet providers at infrastructure level, at platform level as well. For example, it is necessary to control the rules according to which content delivery platforms play out content or language assistants react to commands. The aim should be to ensure transparency, freedom of choice and diversity for consumers.

- **Fighting cybercrime through greater platform responsibility:** Cybercrime on platforms (identity theft, fake shops, prepayment fraud) is increasing sharply and is leading to a considerable loss of consumer confidence in the safe use of online services. In cooperation with the authorities responsible for combating white-collar crime, measures must be developed that effectively prevent harm to consumers. The minimum level of protection includes: the introduction of a mandatory European company register for online providers, obliging platform providers to clarify the identity of commercial providers; the responsibility of the platform to prevent reported illegal offers from reappearing; rapid examination of the platforms of consumer reported fraud cases, improving cooperation between authorities.

- **Art 15 of the e-Commerce Directive must be retained:** The maxim of not imposing general, blanket obligations to check in advance on providers must be maintained. When weighing up the pros and cons of preventive filtering measures, the concerns about the associated restrictions of fundamental rights and freedoms under the ECHR outweigh by far. The scope of application for "proactivemeasures" (essentially a control of algorithms), as contained in the "terrorismcontent" Regulation, should under no circumstances be extended by further specific derogations of Art 15.

- **Detailed rules for "notice and take down":** The tension between the protection of intellectual property and disadvantages for consumers due to a precautionary "overblocking" of the platforms becomes visible in the implementation of the Copyright Directive. The German Network Enforcement Act, which is intended to prevent hate and fake content, can only serve as a model to a limited extent. It is essential to provide criteria for the composition of the committees that decide on blocking and deletion. This should ensure that it is not the platforms themselves that decide in the sense of a "privatisation of jurisdiction", but rather that independence, expertise, annual reporting obligations and supervision by a state body are proven.

Competition law - ex-ante supervision by regulatory authority

Sector-specific ex-ante regulations are urgently required for market-dominant Internet platforms to supplement existing competition law. This is to ensure that the **"rules of the game"** are **proactively** established in bilateral or multilateral markets in order to meet the requirements of digitization.

Internet platforms with market power have the **characteristics of classic infrastructures**. While electricity, telecommunications or railway networks are regulated, for example, large online platforms set the rules themselves and act as **private rule-setters and "gatekeepers"**. In addition, all Internet platforms with market power have in common that they have a large pool of data relevant to competition and thus have the data infrastructure in addition to the digital infrastructure. The competition authorities have already concluded or initiated a number of important proceedings. However, these proceedings take too long to establish fair competition in a timely manner. The cases of abuse that have been taken up have in common that the dominant platform operator (such as Amazon, Google or Facebook) abused its dominant position. The abuse control of competition law therefore regularly has an ex-post effect and ultimately represents only reactive action.

The **creation of regulatory authorities at European and national level** to carry out **ex-ante supervision** of internet platforms is urgently needed. This is the only way to achieve essential objectives such as an open democratic and sustainable society, a fair and competitive economy, and ensuring that technology serves people. These objectives should also be explicitly anchored in the Digital Services

Act. **Ex-ante regulations** are also required in the context of the development of **Digital Innovation Centres** and **Artificial Intelligence (AI)** with regard to data access for third parties and monitoring compliance with data protection regulations, as well as the establishment of **dispute resolution mechanisms**. A European directive for the ex-ante regulation of market-dominant Internet platforms is called for, analogous to the regulation of classic infrastructures.

We would be happy, if you would take our suggestions for the planned digital services act into account.

Our experts Frank Ey (EU-policy, frank.ey@akwien.at), Daniela Zimmer (consumer policy, daniela.zimmer@akwien.at) and Ulrike Ginner (competition policy, ulrike.ginner@akwien.at) are at your disposal for further questions.

With best regards,

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