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COMMISSION DECISION

of 26.4.2018

on setting up the group of experts for the Observatory on the Online Platform Economy

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Whereas:

- (1) The Commission Communication of 25 May 2016 on "Online Platforms and the Digital Single Market Opportunities and Challenges for Europe"¹ emphasises that online platforms, including online intermediation services provided through online marketplaces, app stores, and social media, as well as search engines, play a prominent role in the creation of digital value that underpins economic growth in the Union. They are of major importance to the effective functioning of the Union's digital single market.
- (2) Undertakings active in the online platform economy facilitate business-to-consumer interactions by providing online intermediation services and online general search. The online platform economy is a key enabler of entrepreneurship, trade, and innovation and consumer welfare.
- (3) For the purposes of this Decision, the notion of the online platform economy should be understood to cover all economic activity arising out of actual or intended commercial transactions in the internal market and facilitated directly or indirectly by online platforms, in particular online intermediation services and online search engines. That economic activity can involve a range of actors, including providers of online intermediation services, providers of online search engines, undertakings that use online platforms to offer goods or services, consumers, as well as third parties that are commercially active in the online platforms ecosystem.
- (4) The growing importance of the online platform economy raises new policy and regulatory challenges. In particular, while offering considerable advantages in terms of efficient access for undertakings to the internal market, especially for small and medium-sized enterprises, the potential of the online platform economy cannot be fully exploited due to certain potentially harmful trading practices and a lack of effective redress. The proposal for a Regulation on promoting fairness and transparency for business users of online intermediation services² aims to address such challenges.
- (5) The fast-changing nature of the technologies used to provide online intermediation services and online search engines may have an impact on both the scale and scope of potentially unfair and harmful trading practices affecting the undertakings concerned, notably business users and corporate website users. The use of new physical devices,

¹ COM(2016) 288

² COM(2018) 238

virtual interfaces as well as matching techniques is constantly being explored in the online platform economy. Different commercial issues are already emerging in this context, including those relating to algorithmic decision-making and ranking, data access and use, remuneration of material displayed online, business-to-business commercial relations in online advertising, alleged discriminatory practices of service providers vis-à-vis users and restrictions on users to offer different conditions on other distribution channels.

- (6) In view of the speed and fundamental nature of the technological change in the online platform economy, and the breadth of those issues, it is necessary to monitor its evolution in order for policy-making to be more information-based and targeted, and, to the extent the application of existing tools such as competition law cannot sufficiently address those issues, to underpin targeted policy measures.
- (7) It is therefore necessary to set up a group of experts in the field of the online platform economy to advise the Commission and to define its tasks and its structure.
- (8) This group of experts and a dedicated team of Commission officials form the EU Observatory on the Online Platform Economy. The contribution of the group of experts to the work of the Observatory should include, in particular, the preparation and adoption of reports and opinions.
- (9) The group of experts should liaise, upon request of the Commission, with other relevant expert groups related to the online platform economy, including the expert group on electronic commerce established by Commission Decision 2005/752/EC³, and relevant centres of excellence established by Member States. The work of the group of experts set up by this Decision should take account of and aim to complement strands of research and policy work carried out by or on behalf of Commission services on other aspects of the online platform economy, such as in relation to consumer policy or protection of personal data. In that regard, the Commission should ensure coordination, information-sharing and alignment, where appropriate.
- (10) The group of experts should be composed of independent experts in the field of the online platform economy, acting in a personal capacity. Whilst it should be ensured that the group of experts covers a broad range of relevant competencies, it should have a limited number of members, allowing it to work as efficiently as possible and to deliver high quality results.
- (11) Rules on disclosure of information by members of the group should be laid down.
- (12) Personal data should be processed in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council⁴.

³ Commission Decision of 24 October 2005 establishing an expert group on electronic commerce (2005/752/EC), published in OJ L282 of 26/10/2005 p 20-21 2005/752/EC.

⁴ Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

HAS DECIDED AS FOLLOWS:

Article 1

Subject matter

The group of experts for the Observatory on the Online Platform Economy (“the group”) is hereby set up.

Article 2

Tasks

The group’s task shall be:

- (a) to provide the Commission with advice and expertise on the evolution of the online platform economy, in particular as regards potentially harmful practices in commercial transactions between, on the one hand, providers of online intermediation services and of online search engines and, on the other hand, undertakings established in the Union that use or intend to use those online services to offer their goods or services to consumers located in the Union;
- (b) to perform expert analysis on issues of particular importance that may arise in relation to the online platform economy and the potentially harmful practices referred to in point (a), including:
 - (i) issues related to algorithmic decision-making and ranking in connection with the provision of online intermediation services and online search engines, including the question of transparency;
 - (ii) access to, and use of, different categories of personal data and other data, in compliance with data protection rules, provided or generated in the context of the provision and use of online intermediation services and online search engines;
 - (iii) issues related to remuneration for material displayed online, in particular in relation to search results;
 - (iv) transparency and accountability in business-to-business commercial relations in online advertising;
 - (v) differentiated treatment which providers of online intermediation services might give to goods and services offered by themselves or by the undertakings which they control;
 - (vi) restrictions to offer different conditions when using other distribution channels which providers of online intermediation services might impose on business users;
 - (vii) possible impacts of these potentially harmful practices on consumers;
- (c) to assist the Commission in the preparation of its annual work programme, as regards the issues referred to in point (b);
- (d) to analyse the evolution of regulation, self-regulation or other policy measures related to the online platform economy in the Member States or, where relevant, for the online platform economy in the Union, in third countries;
- (e) upon the request of the Commission, and under its supervision, to liaise on specific issues related to the online platform economy with other relevant expert bodies or

centres of excellence at Union, national or international level, to the extent necessary to perform the other tasks set out in this Article.

Article 3

Consultation

1. The Commission may consult the group on any issue related to the online platform economy.
2. The Chairperson of the group may advise the Commission to consult the group on a specific issue related to the online platform economy.

Article 4

Membership

1. The group shall be composed of 15 members.
However, the group may be composed of a lower number of members if the selection process referred to in Article 5 does not allow for the selection of a sufficient number of persons who meet the applicable requirements. The group shall not be composed of less than 10 members.
2. Members shall be individuals appointed in a personal capacity. They shall have a proven competence and experience in respect of the online platform economy in general or of specific digital technologies, business models or other issues related thereto.
3. Members shall act independently and in the public interest.
4. Members who are no longer capable of contributing effectively to the group's deliberations, who, in the opinion of the Commission's Directorate General for Communication Networks, Content and Technology and the Directorate General for Internal Market, Industry, Entrepreneurship and SMEs ("responsible Directorates-General of the Commission"), do not comply with the conditions set out in Article 339 of the Treaty on the Functioning of the European Union or who resign, shall no longer be invited to participate in any meetings of the group and may be replaced for the remainder of their term.

Article 5

Selection process

1. The selection of the group's members shall be carried out through a public call for applications, to be published on the Register of Commission expert groups and other similar entities ('the Register of expert groups'). The call for applications may also be published online.
The call for applications shall clearly set out the selection criteria, including the required expertise in relation to the tasks to be performed. The minimum time period for receiving applications shall be four weeks.
2. Individuals applying to be appointed as members of the group shall disclose any circumstances that could give rise to a conflict of interest. In particular, the Commission shall require those individuals to submit a declaration of interests ('DOI') form on the basis of the standard DOI form for expert groups, together with

an updated *curriculum vitae* as part of their application. Submission of a duly completed DOI form shall be necessary in order to be eligible to be appointed as a member. The conflict of interest assessment shall be performed in compliance with Article 11 and Annex 4 of the Commission's horizontal rules on expert groups ('the horizontal rules')⁵.

3. The members of the group shall be appointed by the Directors-General of the responsible Directorates-General of the Commission, after having consulted other affected Commission services where appropriate, from individuals with competence in the areas referred to in Article 2 and Article 4(2) who have responded to the call for applications.
4. Members shall be appointed for a period of two years, renewable once upon request by the member concerned. They shall remain in office until replaced or until the end of their term. In deciding on requests for renewal of appointments, the responsible Directorates-General of the Commission shall, after having consulted other affected Commission services where appropriate, seek to have at least one third of the members of the group to be comprised of first time appointees.
5. The responsible Directorates-General of the Commission shall, after having consulted other affected Commission services where appropriate, establish a reserve list of individuals with competence in the areas referred to in Article 2 and Article 4(2) who have responded to the call for applications, which may be used to appoint members' replacements. The responsible Directorates-General of the Commission shall obtain the applicants' consent before including their names on the reserve list.

Article 6

Chairperson

The group shall elect a Chairperson from amongst its members by simple majority for a one year term, renewable once. That election and renewal shall be subject to approval by the responsible Directorates-General of the Commission.

Article 7

Operation

1. The group shall act either at the request of the responsible Directorates-General of the Commission, which shall closely cooperate with other affected Commission services where appropriate, or at the request of its Chairperson with the agreement of the responsible Directorates-General of the Commission, in compliance with Article 13(1) of the horizontal rules.
2. Meetings of the group shall, in principle, be held on Commission premises.
3. The responsible Directorates-General of the Commission shall provide secretarial services, and support the analysis to be performed by the group by engaging in data-gathering and processing activities

⁵

Commission Decision of 30.5.2016 establishing horizontal rules on the creation and operation of Commission expert groups (C(2016) 3301 final).

4. In agreement with the responsible Directorates-General of the Commission, the group may, by simple majority of its members, decide that deliberations shall be public.
5. The Chairperson shall convene the meetings of the group through its secretariat in agreement with the responsible Directorates-General of the Commission. The group shall convene at least four times a year.
6. Minutes of the discussion on each point on the agenda and on the opinions or reports delivered by the group shall be meaningful and complete. Minutes shall be drafted by the secretariat under the responsibility of the Chairperson.
7. The group shall seek to adopt its opinions or reports by consensus. In the event of a vote, the outcome of the vote shall be decided by simple majority of the members. Members who have voted against shall have the right to have a document summarising the reasons for their position annexed to the opinion or report concerned.

Article 8

Sub-groups

1. The responsible Directorates-General of the Commission may set up sub-groups for the purpose of examining specific questions related to the online platform economy on the basis of terms of reference defined by the responsible Directorates-General of the Commission. Sub-groups shall operate in compliance with the horizontal rules and shall report to the group. They shall be dissolved as soon as their mandate is fulfilled.
2. The members of sub-groups who are not members of the group shall be selected through a public call for applications, in compliance with Article 5 of this Decision and Article 10 and Article 14(2) of the horizontal rules.

Article 9

Invited experts

The responsible Directorates-General of the Commission may, after having consulted other affected Commission services where appropriate, invite persons with specific expertise with respect to a subject matter on the agenda to take part in the work of the group or sub-groups on an ad hoc basis.

Article 10

Observers

1. Individuals, organisations or public entities other than Member States' authorities may be granted an observer status, in compliance with the horizontal rules, by direct invitation of the Commission.
2. Organisations or public entities appointed as observers shall nominate their representatives.
3. Observers and their representatives may be permitted by the Chairperson to take part in the discussions of the group and provide expertise. However, they shall not have voting rights and shall not participate in the formulation of advice of the group.

Article 11

Rules of procedure

On a proposal by and in agreement with the responsible Directorates-General of the Commission the group shall adopt its rules of procedure by simple majority of its members, on the basis of the standard rules of procedure for expert groups, in compliance with Article 17 of the horizontal rules.

Article 12

Professional secrecy and handling of classified information

The members of the group and of sub-groups, as well as invited experts and observers and their representatives, shall comply with the obligation of professional secrecy, which by virtue of the Treaties and the rules implementing them applies to all members of the institutions and their staff, and shall be subject to the Commission's rules on security regarding the protection of Union classified information laid down in Commission Decisions (EU, Euratom) 2015/443⁶ and 2015/444⁷. The Commission shall take all appropriate measures where they fail to respect those obligations.

Article 13

Transparency

1. The group and sub-groups shall be registered in the Register of expert groups.
2. The following data regarding the composition of the group and of any sub-groups shall be published in the Register of expert groups:
 - (a) the name of its members;
 - (b) the name of any observers.
3. All relevant documents, including the agendas, the minutes and the participants' submissions, shall be made available either in the Register of expert groups or by means of a link from the Register to a dedicated website, where those documents can be found. Access to the dedicated website shall not be submitted to user registration or any other restriction. In particular, the agenda and other relevant background documents shall be published in due time ahead of the meeting, followed by timely publication of minutes. Documents shall not be published only where it is considered that their disclosure would undermine the protection of a public or private interest as defined in Article 4 of Regulation (EC) No 1049/2001.

Article 14

Meeting expenses

1. Participants in the activities of the group and sub-groups shall not be remunerated for the services they provide.

⁶ Commission Decision (EU, Euratom) 2015/443 of 13 March 2015 on Security in the Commission (OJ L 72, 17.3.2015, p. 41).

⁷ Commission Decision (EU, Euratom) 2015/444 of 13 March 2015 on the security rules for protecting EU classified information (OJ L 72, 17.3.2015, p. 53).

2. Travel and subsistence expenses incurred by participants in the activities of the group and sub-groups shall be reimbursed by the Commission. Reimbursement shall be made in accordance with the provisions in force within the Commission and within the limits of the available appropriations allocated to the Commission departments under the annual procedure for the allocation of resources.

Done at Brussels, 26.4.2018

For the Commission
Mariya Gabriel
Member of the Commission