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COVER NOTE

From: Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director

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To: Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union

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Subject: COMMISSION DELEGATED REGULATION (EU) .../... of 2.3.2023 supplementing Regulation (EU) 2022/2065 of the European Parliament and of the Council with the detailed methodologies and procedures regarding the supervisory fees charged by the Commission on providers of very large online platforms and very large online search engines

Delegations will find attached document C(2023) 1257 final.

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Brussels, 2.3.2023
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COMMISSION DELEGATED REGULATION (EU) .../...

of 2.3.2023

supplementing Regulation (EU) 2022/2065 of the European Parliament and of the Council with the detailed methodologies and procedures regarding the supervisory fees charged by the Commission on providers of very large online platforms and very large online search engines

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Regulation (EU) 2022/2065 on a Single Market for Digital Services amending Directive 2000/31/EC (Digital Services Act, DSA) was published in the Official Journal on 27 October 2022 and entered into force on 16 November 2022¹. This Regulation provides a general legal framework applicable to all intermediary services in Europe in accordance with a graduated approach based on the function and size of the services at stake. In view of their reach and systemic impact on the public debate, the dissemination of information, and economic transactions across the Union, very large online platforms and very large online search engines are subject to the broadest set of obligations and to a centralised supervisory and enforcement structure, aiming at ensuring a consistent supervision across Europe. In particular, the DSA entrusts the Commission with exclusive competence to designate online platforms and online search engines as very large online platforms and very large online search engines and to supervise them and enforce the obligations laid down in Section 5 of Chapter III of the DSA vis-à-vis these designated services. It also gives the Commission the primary competence to enforce all other DSA obligations with respect to these designated services and to coordinate and develop expertise and capabilities at European level regarding the supervision of systemic and emerging issues. Moreover, there are additional tasks assigned to the Commission that relate to the size and intrinsic cross-border and/or pan-EU reach of these designated services, such as the task to solve cross-border disputes among national competent authorities on the enforcement of the DSA obligations, to provide the secretariat to the European Board of Digital Services and the set-up and maintenance of the information sharing system among national authorities, the Commission and the Board as well as the database of statement of reasons for removal provided for in Article 24(5) of DSA.

To ensure the necessary resources for the Commission to effectively carry out the supervisory tasks under DSA at the EU level, Article 43 requires the Commission to charge an annual supervisory fee to each provider of designated very large online platform or very large online search engine.

Article 43 of the DSA sets out the basic criteria for the determination of the supervisory fee.

First, the overall amount of the annual supervisory fees must cover the amount of the annual costs incurred by the Commission to exercise the supervisory tasks established in the DSA, and in particular those listed in Article 43(2) of the DSA, as reasonably estimated beforehand. Such amount must include costs relating to the exercise of the specific powers and tasks of supervision, including investigation, enforcement and monitoring in respect of providers of very large online platforms and very large online search engines pursuant to Section 4 of Chapter IV DSA, costs related to the designation of such platforms and search engines and to the set-up, maintenance and operation of the databases set out under DSA.

Moreover, an individual supervisory fee must be charged annually upon each provider of (one or more) services designated as very large online platform or very large online search engine. In this regard, the individual charge must be proportionate to the number of average monthly active recipients of each designated service in the Union. Finally, each supervisory fee must

¹ OJ L 277, 27.10.2022, p. 1.

not exceed the ceiling of 0,05% of the worldwide annual net income of the provider of the designated service (or services) in the preceding year.

These supervisory fees will constitute external assigned revenue in accordance with Article 21(5) of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council (the Financial Regulation)².

Finally, regarding the procedure Article 43 requires the Commission to adopt each year implementing acts setting out the specific annual supervisory fee in respect of each provider of one or more designated services to which the supervisory fee should be charged, by way of Commission implementing decisions establishing the amounts receivable pursuant to Article 98 of the Financial Regulation.

On the basis of these criteria, Article 43(4) of the DSA empowers the Commission to adopt delegated acts to further specify the detailed methodology and procedures for:

- the determination of the estimated costs that the Commission incurs in relation to its supervisory tasks under the DSA;
- the determination of the overall amount of the annual supervisory fee charged to each provider of designated very large online platform or very large online search engine;
- the determination of the maximum overall limit of the annual supervisory fee charged to a provider of designated very large online platform or designated very large online search engine;
- the detailed arrangements necessary to make payments.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

On 19 December 2022, the Commission consulted the Expert Group on Digital Services on the content of this delegated act. The Expert Group overall supported the Commission's approach regarding the delegated act on the methodology and procedures for the application of the supervisory fees as set out in the DSA. Representatives in the Expert Group highlighted in particular the importance to ensure alignment with the identity of the providers identified in the designation decisions as well as the need to refer to net income or profit of the whole entity providing the service, given the difficulty to identify the profits related to one specific service.

The delegated act was subject to a four-weeks feedback period on the 'Have Your Say' portal from 22 December 2022 to 19 January 2023, in line with the Commission's Better Regulation guidelines. 11 contributions were received, 3 from EU-wide industry associations, 1 from a not-for-profit foundation, 1 from a national regulator in Portugal, 2 from national trade associations (Austria and France respectively) and 4 from individual citizens. In general, most respondents focused on some recurring topics, related in particular to the possibility of

² Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1).

different or inconsistent methodologies to count active recipients of the services at stake, the reference to profits of the provider, including its possible consolidated dimension, as a suitable metric, and the length of the proceedings to determine the individual fee amounts. Transparency over the expenses to be accounted for, in particular in the initial phase, was also raised.

In this regard it should be noted that most of these issues are related to principles actually already defined in the legal basis, leaving no margin for different choices in the delegated act. In particular, the need to ensure proportionality with the number of average monthly active recipients in the Union of each very large online platform or very large online search engine designated pursuant to Article 33 of DSA is mandated by Article 43(5)(b), and it is therefore necessary to ensure consistency with the concept of number of average monthly active recipients pursuant referred to in Articles 24 and 33 DSA and, as a consequence, any information gathered in that context. This parameter is accordingly to be used for the calculation of the basic amount and any other allocation of residual amount, which will therefore be equally proportionate to the number of users, while ensuring at the same time full coverage of estimated costs.

With specific regard to the appropriateness of the reference to profits of the provider, the delegated act simply translates the concept of worldwide net-income (revenues minus costs) of the provider referred to in Article 43(5)(c) DSA in the specific technical term identified in statutory financial reporting obligations (under EU law, or other equivalent rules) applicable to the provider of the service or services at stake, in order to ensure reference to a specific, well identified, objective, audited parameter, fully comparable across different providers and countries. In this regard, as also clarified by recital 101 DSA, it should also be stressed that the 0,05% cap is purportedly a parameter not linked to the service or services at stake, since it is rather meant to identify “the economic capacity of the provider” (emphasis added), i.e. its general ability to pay an overall amount up to a level that cannot, under the appreciation of the co-legislators, significantly affect the economic viability of the provider itself, including not affecting it at all in case of losses (even if not related to the specific designated services). This parameter, moreover, is also able to treat fundamentally different platform governance models, such as not-for-profit providers, in accordance to their specificities. Any deviation from this parameter, for instance by excluding certain services and/or countries which have an impact on the general economic capacity of the provider, does not appear warranted in view of the legal basis. At the same time the reference to the consolidated dimension of the economic unit providing the service or services at stake, where applicable, prevents risks of circumvention or different treatment of substantially similar providers in terms of economic capacity, only in view of some potentially different corporate governance structure, in line with the well established practice for the assessment of the statutory maximum limits applicable to fines applied in the context of Union competition law, also referring to consolidated figures.

Moreover, with regard to the timeframe of the procedure, also this aspect is dictated by the structure of the legal basis, and in particular the necessity to perform an annual exercise in accordance with comitology requirements, taking into account the general timeframe for the applicability of the specific obligations applicable to very large online platforms and very large online search engine. It should moreover be stressed that the calculation will be based on data already existing, often published and/or possibly also already subject to audits (e.g. list of designated providers, estimation of costs, data related to financial reporting obligations) and will follow the application of a standardised and non-discretionary mathematical formula,

while still leaving the possibility to be heard on the provisional calculations made by the services.

Finally, with regard to the transparency of the costs to be charged, the Delegated Regulation at stake provides an ex-ante transparency tool (the overview in support of the estimation included in the context of the budgetary procedure) as well as an ex-post verification mechanism, which will shape the necessary internal practical arrangements for internal control and cost accounting in accordance with the general internal organisation rules of the Commission. With specific regard to comments related to the precision in the indications of the 2022 and 2023 costs to be recovered through the fee, moreover, taking into account the final vote over the Commission annual budget for 2023, it is considered appropriate to limit any possibility of recovery through the fee to costs for which a specific funding source is not yet established in the voted budget for 2023, so that the scope of the first estimation will be fundamentally aligned to those of the following years.

An impact assessment has not been carried out concerning the delegated act for the following reasons:

- The decision that the Commission will charge annual supervisory fees and its essential elements was taken by the legislative authority and is enshrined in the DSA.
- The DSA also sets out the criteria for the determination of its amount as well as the basic elements of the procedure, including the adoption of annual implementing acts for the determination of the supervisory fees in respect of each provider and regular reporting obligations to ensure the necessary due diligence by the Commission.
- The provisions on the methodology and procedures for the application of the supervisory fees that are included in this delegated act are the specification of a technical and/or procedural nature of the substantive choices made by the legislative authority.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

Article 1 – Definitions

It defines the relevant definition for the act, in particular that of “designated service” and that of “provider of designated service or services”.

Article 2 – Estimation of overall costs

This Article defines the main categories of costs to be accounted for in the estimation of costs to be recovered through the supervisory fees, as well as the obligation to deduct or add any surplus or deficit resulting from the report of incurred costs.

Article 3 – Annual identification of designated services

This Article identifies the services that should be subject to the payment of the fee in a given year n.

Article 4 – Determination of the basic amount per service

This Article specifies the criteria on the basis of which the basic amount per service must be calculated. Notably it defines the adjustment coefficients as well as the formula on the basis of which the overall costs are allocated per service.

Article 5 – Determination of the overall amount of the supervisory fee and application of the maximum overall limit

This Article specifies how the overall amount of the supervisory fee is to be calculated, taking into account the application of the maximum overall limit to each provider. In this latter regard, it provides the rules to identify the maximum overall limit on the basis of the amount of profits resulting from the applicable financial reporting standards.

Article 6 – Yearly procedure

This Article spells out the timing for the estimation of costs in line with the budgetary procedures and the adversarial procedure leading to the adoption of the individual implementing act per provider.

Article 7 – Payment modalities and financial consequences in case of non-payment

This Article specifies the currency in which the fee is to be paid and the interest rate applicable in case of missing or late payments.

Article 8 – Reporting of incurred costs and of the supervisory fees charged

This Article specifies the content of the report of the Commission to the European Parliament and the Council that shall indicate the costs actually incurred, the fees collected and any surplus/deficit to be accounted for in the following estimation.

Article 9 – Transitional provision

This Article provides for specific rules concerning the estimation of costs to be performed in 2023 and the first report to the European Parliament and the Council.

Article 10 – Entry into force

COMMISSION DELEGATED REGULATION (EU) .../...

of 2.3.2023

supplementing Regulation (EU) 2022/2065 of the European Parliament and of the Council with the detailed methodologies and procedures regarding the supervisory fees charged by the Commission on providers of very large online platforms and very large online search engines

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and amending Directive 2000/31/EC (Digital Services Act)³, and in particular Article 43(4) thereof,

Whereas:

- (1) Article 43 of Regulation (EU) 2022/2065 requires the Commission to charge providers of very large online platforms and of very large online search engines annual supervisory fees, the overall amount of which is to cover all estimated costs, as reasonably determinable beforehand, that the Commission incurs regarding the supervisory tasks under that Regulation.
- (2) The costs to be estimated for the supervisory fees charged in year n should be determined by taking into account all human resources to be employed by the Commission in the year n+1 to carry out the tasks referred to in Article 43(2) of Regulation (EU) 2022/2065, including officials, temporary and contract agents and seconded national experts. Taking into account that the estimation refers to future costs, it should be based on average costs, expressed in terms of Full-Time-Equivalent increased by the average applicable social contributions and operating expenditure related to these human resources. This operating expenditure should therefore include average costs incurred in order to host and enable a Full-Time-Equivalent unit of personnel to work in the Commission IT and physical infrastructure, for instance as regularly determined by Commission services in the context of calculation of average costs of personnel for the purpose of legislative financial statements.
- (3) In addition to the abovementioned costs for human resources, the Commission also needs to estimate other operational and administrative expenditures that are specifically related to the fulfilment of the tasks referred to in Article 43(2) of Regulation (EU) 2022/2065, such as studies, hiring of experts, surveys, missions,

³ OJ L 277, 27.10.2022, p. 1.

organisation of meetings or development or use of specific software or IT tools or services. The yearly estimation of the overall amount of costs, moreover, should take into account the difference between the estimated costs and the incurred costs of the previous year as resulting from the annual report adopted by the Commission.

- (4) The overall amount of costs annually estimated by the Commission should be borne by the providers of very large online platforms and of very large online search engines through the supervisory fees charged in respect of the designated services subject to the supervisory fee in each calendar year. In order to ensure consistency with the designation decisions pursuant to Article 33(4) of Regulation (EU) 2022/2065, the notion of provider of designated service or services should be identified with reference to the addressee or addressees of the related designation decision or decisions pursuant to Article 33(4) of Regulation (EU) 2022/2065. Where the decision adopted pursuant to Article 33(4) of Regulation (EU) 2022/2065 is addressed to more than one legal person, all addressees of that decision should be jointly and severally liable for the payment of the supervisory fee in respect of that service or these services.
- (5) The services to be accounted for in a given year n should include those already subject to the obligations applicable to very large online platforms and very large online search engines at the beginning of the year, as well as those in respect of which a decision to designate or a decision to terminate the designation will take effect during that calendar year, taking into account that decisions of both categories will take effect four months after their notification to the provider pursuant to Article 33(6) of Regulation (EU) 2022/2065. That time limit should be calculated in accordance with the general rules set out in Regulation (EEC, Euratom) 1182/71⁴ determining the rules applicable to periods, dates and time limits.
- (6) The Commission should set out the overall amount of the supervisory fee to be charged each year to each provider by first determining a basic amount per designated service. The basic amount per service should result from dividing the overall annual costs estimated for the year n+1 by all the designated services accounted for in the year n. To determine the basic amount, account should be taken of the number of days of designation in year n. Secondly, in order to ensure proportionality of the individual supervisory fees with reference to the size of the designated service as resulting from the number of average monthly active recipients in the Union, the Commission should adjust the basic amount by a coefficient proportionate to the number of active recipients resulting from the available information.
- (7) Pursuant to Article 43(5) of Regulation (EU) 2022/2065, any provider of the designated service or services is not to pay an overall amount of supervisory fee exceeding its economic capacity, namely exceeding 0,05% of its annual worldwide net income. Reference to net income, entailing overall revenues minus costs of the provider, should ensure that the ability to pay of the provider is taken into account, including in case of loss-making providers. In order to identify such limit in accordance with applicable financial reporting standards, reference should be made to the notion of overall worldwide profit in the preceding financial year, to be

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OJ L 124, 8.6.1971, p. 1–2.

determined on the basis of the provider's best available figures resulting from the financial statements, as communicated to the Commission. Therefore, reference should be made to the International Financial Reporting Standards applicable in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council⁵, where used by the provider concerned, or in the alternative case to the financial statements compiled in accordance with the reporting requirements pursuant to Directive 2013/34/EU of the European Parliament and of the Council⁶. Where neither International Financial Reporting Standards or Directive 2013/34/EU apply to the provider concerned, reference should be made to any other third country acceptable reporting standard applicable to such provider, such as a third country reporting standard that is considered equivalent to International Financial Reporting Standards or any other third country reporting standard that may be considered generally acceptable for the purpose of any other Union legislation. Where a provider has consolidated accounts, the consolidated worldwide profit of the group to which that provider belongs best reflects its economic capacity to pay the supervisory fee, given that the financial resources of the group are available to that provider in order to bear the overall amount of fee charged for all designated service or services provided by that provider.

- (8) If the basic amount charged on a given provider, or the sum of the relevant basic amounts where a given provider provides more than one designated service, exceeds the maximum overall limit, the final supervisory fee charged on that provider should be reduced accordingly. In order to ensure that in any case the overall annual costs are paid through the supervisory fees levied across all designated services, the residual amount not charged on providers in view of the application of the maximum overall limit should be borne by the remaining providers below the limit, proportionately to the basic allocation formula. The allocation of residual amounts among other providers of designated services, following the application of the maximum overall limit, should continue until no residual amount remains.
- (9) In accordance with Article 43(3) of Regulation (EU) 2022/2065, the Commission is to adopt each year individual implementing acts setting out the individual amount of the supervisory fee to be charged to each provider for the designated service or services subject to the obligation to pay the supervisory fee during that calendar year. The yearly procedure for charging the fee therefore should be organised in a way that those implementing acts are adopted after the overall annual costs, which will be the basis for the calculation of the overall amount of the supervisory fees to be charged, are determined as stated in the Commission preparatory document attached to the draft budget pursuant to Article 41(8) of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union⁷. Furthermore, the individual implementing acts can be adopted only after a certain date, where the number and size of the designated services subject to the supervisory fees can be established. The

⁵ Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards (OJ L 243, 11.9.2002, p. 1).

⁶ Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

⁷ OJ L 193, 30.7.2018, p. 1.

procedure should also take into account the economic capacity in terms of profits of the corresponding providers as identified on the basis of the information provided by the concerned provider. Moreover, the provisional amount of the fee to be charged should be communicated to the concerned provider before the adoption of any implementing decision by the Commission, in order to give the opportunity to submit observations to be taken into account in the final determination of the supervisory fee. After considering the observations submitted, the Commission should adopt the corresponding implementing act setting out the individual supervisory fee payable as amount receivable pursuant to Article 98 of Regulation (EU, Euratom) 2018/1046, to be paid by the end of that same calendar year, so that the necessary resources are available to cover the estimated costs for the following year.

- (10) The failure to pay within the deadline determined by the implementing acts should give rise to the recovery of the unpaid amount together with default interest at the European Central Bank refinancing rate increased by 3.5%, in accordance with Article 99(2) of Regulation (EU, Euratom) 2018/1046.
- (11) In order to ensure accountability and transparency of the costs incurred and revenues collected by the Commission for the supervisory tasks carried out pursuant to Regulation (EU) 2022/2065, the Commission should annually report them to the European Parliament and the Council and make such report publicly available on its website. Moreover, in order to ensure consistency between the estimation of costs and the specific supervisory costs actually incurred for that year, the report should specifically compare the relevant amounts, based on the payments effectively performed in the relevant period for each concerned category of costs referred to in Article 43(2) of Regulation (EU) 2022/2065, as well as any expenditure commitment undertaken during that year, including following any judicial decision issued during that year. Any difference between the amount estimated and the costs actually incurred should not affect the amount of supervisory fees charged for the relevant year, but it should be taken into account in the next estimation, either by deducting any surplus from the total costs estimated for year n+2 or by adding any deficit to the total costs estimated for year n+2.
- (12) The estimation of costs should identify the costs that are planned to be incurred in the following calendar year, in order to ensure that sufficient resources are made available to the Commission in advance. In the period from the entry into force of Regulation (EU) 2022/2065 to 1 January 2024, the Commission will have already incurred or planned costs pursuant to Article 43(2) Regulation (EU) 2022/2065 that could not be covered by any previous supervisory fee and therefore had to be generally covered by other appropriations provided for in the voted budget of the Union for 2023. Therefore, for the purpose of the determination of the overall fees to be charged in 2023, only costs not already covered by existing appropriations in the general budget of the Union for 2023 could be added to the costs estimated for 2024, in accordance with the information provided for in the overview accompanying the estimation. Accordingly, for the purpose of establishing any surplus or deficit to be taken into account in the following estimation, the first report to the European Parliament and the Council should only take into account these costs incurred in 2022 since the entry into force of Regulation (EU) 2022/2065 and in 2023 that were not already covered by existing appropriations,

HAS ADOPTED THIS REGULATION:

Article 1

Definitions

For the purposes of this Regulation, the following definitions apply:

- (1) ‘designated service’ means an intermediary service designated as a very large online platform or a very large online search engine pursuant to Article 33(4) of Regulation (EU) 2022/2065;
- (2) ‘provider of designated service or services’ means any provider to whom one or more Commission decisions designating a very large online platform or a very large online search engine pursuant to Article 33(4) of Regulation (EU) 2022/2065 is addressed;
- (3) ‘basic amount’ means the amount calculated for each designated service in accordance with Article 4 and before the application of the maximum overall limit referred to in Article 5.

Article 2

Estimation of overall annual costs

1. In each year *n* the Commission shall estimate the overall annual costs that are expected to be incurred for the performance of the tasks referred to in Article 43(2) of Regulation (EU) 2022/2065 in the following calendar year (year *n*+1) in accordance with the procedure laid down in Article 6(1) of this Regulation. The amount of the overall annual costs estimated for the year *n*+1 shall be the basis for determining the overall amount of supervisory fees charged in the year *n*. That estimated amount shall be fully charged on the providers of designated services through the supervisory fees calculated in accordance with this Regulation.
2. When estimating the overall annual costs, the Commission shall take into account:
 - (a) the human resources necessary for the fulfilment of the tasks referred to in Article 43(2) of Regulation (EU) 2022/2065, taking into account different categories of officials and other servants of the Union employed by the Commission. The estimation of costs shall be based on average costs, expressed as Full-Time-Equivalent, and shall include pro-rata average operating expenditure and applicable social contributions linked to such human resources;

- (b) any other administrative or operational expenditure necessary for the fulfilment of the tasks referred to in Article 43(2) of Regulation (EU) 2022/2065 that are expected to be incurred during the year n+1, taking into account the non-exhaustive list of items listed in Annex I to this Regulation.
3. Any estimation of overall annual costs shall take into account the positive or negative amount of incurred costs as included in the report referred to in Article 8(4). In particular, in the event of a deficit, namely where the amount of estimated costs for the year n was lower than the reported costs incurred for that year, the amount of the overall annual costs estimated for year n+2 to be charged during year n+1 shall be increased by the amount of incurred deficit for year n. In the event of a surplus, namely where the amount of estimated costs for the year n exceeds the reported costs incurred for that year, the overall annual costs estimated for year n+2 to be charged during year n+1 shall be reduced by the resulting surplus for year n.

Article 3

Annual identification of designated services

The designated services in relation to which a supervisory fee shall be charged in a given year n shall be:

- (a) any service which, on 1 January of that year, was already subject to the obligations of Section 5 of Chapter III of Regulation (EU) 2022/2065 in accordance with Article 33(6) of that Regulation, including any service whose termination of the designation becomes applicable pursuant to Article 33(6) of that Regulation after that date;
- (b) any service which becomes subject to the obligations of Section 5 of Chapter III of Regulation (EU) 2022/2065 in accordance with Article 33(6) of that Regulation between 1 January and 31 December of that year.

Article 4

Determination of basic amount per service

1. In respect of each designated service subject to the supervisory fees pursuant to Article 3, the basic amount for the year n shall be calculated as the share of the overall annual costs estimated for the year n+1 in accordance with Article 2, proportionate to the number of average monthly active recipients of the designated service in line with the coefficient (U) referred to in paragraph 2 of this Article, and taking into account the period during which the service has been designated in line with the coefficient (T) referred to in paragraph 3 of this Article, in accordance with the following formula:

$$\text{Basic_amount_in_year_n_for_designated_service}_x = \frac{\text{Overall_estimation_costs_in_year_n + 1}}{\sum_{\text{for_all_designated_services}_n} (T_n \times U_n)} \times (T_x \times U_x)$$

2. The coefficient (U) for the calculation of the basic amount for each designated service shall have the value set out in Annex II corresponding to the number of average monthly active recipients in terms of millions of units, rounded down to the nearest hundred thousand.

The number of average monthly active recipients of each designated service determining the applicable coefficient pursuant to the first subparagraph of this paragraph shall be that resulting from data reported by the provider of the online platform or of the online search engine pursuant to Article 24(2) of Regulation (EU) 2022/2065, or information requested pursuant to Article 24(3) of that Regulation or any other information available to the Commission, as available on 31 August of year n.

3. The coefficient (T) for the calculation of the basic amount for each designated service shall be the proportion between the number of days during which the service is designated in year n, and the number of days of a year, calculated as follows:

$$T_x = \frac{\text{Number of days of designation in year } n}{\text{Number of days in year } n}$$

In accordance with Article 33(6) of Regulation (EU) 2022/2065, the period of designation shall be considered to start four months after the date of notification of the designation decision pursuant to Article 33(4) of Regulation (EU) 2022/2065 and shall be considered to end four months after the notification of the termination decision pursuant to Article 33(5) of Regulation (EU) 2022/2065.

Article 5

Determination of the overall amount of the supervisory fee and application of the maximum overall limit per provider

1. Each year, the concerned provider of designated service or services shall pay a supervisory fee resulting from the basic amount, or the sum of basic amounts, calculated pursuant to Article 4 for the designated service or services it provides, and the adjustments applied pursuant to this Article.
2. The overall amount of the supervisory fee charged in a given year to a given provider of designated service or services shall not exceed the maximum overall limit equal to 0.05% of its worldwide profit in the preceding financial year. Where a provider has consolidated accounts, the consolidated worldwide profits of the group to which that provider belongs shall be considered for the purposes of determining the maximum overall limit of the fee.

For the purposes of the first subparagraph of this paragraph, the worldwide profit shall be that resulting from the best available figures from the annual financial statements relating to the last full business year presented by the provider concerned, within the meaning of one of the following:

- (a) the International Financial Reporting Standards applicable in accordance with Regulation (EC) No 1606/2002, where used by the provider;
 - (b) point 17 of Annex V or point 15 of Annex VI to Directive 2013/34/EU;
 - (c) any acceptable third country reporting standard, where neither point (a) or (b) are used by the provider.
3. Where the basic amount or the sum of basic amounts calculated pursuant to Article 4 for the designated service or services provided by a given provider exceeds the maximum overall limit set out in paragraph 2 of this Article, the overall amount of the supervisory fee charged to that provider shall be reduced to that limit.
4. The sum of any residual amounts not charged pursuant to paragraph 3 of this Article shall be charged to the remaining providers of designated services for whom the maximum overall limit is not reached, in proportion to the number of average monthly active recipients of the designated service, expressed as the coefficient (U) referred to in Article 4(2), and taking into account the period during which the service has been designated, expressed as the coefficient (T) referred to in Article 4(3), in accordance with the following formula:

$$Pro - quota_residual_charges_uncapped_designated_service_x = \frac{Overall_residual_charges_in_year_N}{\sum_{for_all_uncapped_designated_services_n}(T_n \times U_n)} \times (T_x \times U_x)$$

Where the application of this paragraph triggers the applicability of the maximum overall limit for one or more remaining providers of designated service or services, paragraph 3 and this paragraph shall continue to apply until no residual amount remains.

Article 6

Yearly procedure to determine the individual fees

1. In accordance with Article 41(8) of Regulation (EU, Euratom) 2018/1046, in the context of the establishment of the draft budget for year n+1, the Commission shall determine, for each relevant budget line, the estimated amount of external assigned revenues stemming from the supervisory fees that will be made available at the beginning of year n+1, as the amounts corresponding to the overall annual costs estimated for year n+1 in accordance with Article 2 of this Regulation.

The estimation pursuant to the first subparagraph of this paragraph shall be accompanied by an overview prepared by the Commission indicating the elements accounted for such estimation in accordance with the different categories of costs of

Article 2, to be published at the latest by 30 June of each calendar year on the Commission website.

2. At the latest by 31 August of each year, any provider of designated service or services subject to the supervisory fee pursuant to Article 3 shall provide to the Commission its latest financial statement, and any other supporting document for the determination of the maximum overall limit pursuant to Article 5 as well as, where applicable, any information necessary for the application of the fee. Where a provider does not provide the documents necessary for the determination of the maximum overall limit, it shall be presumed that this limit is not reached by that provider in that calendar year.
3. At the latest by 30 September of each year, the Commission shall communicate to each provider of designated service or services identified pursuant to Article 3 the provisional determination of the amount of supervisory fee for all designated services provided by that provider calculated in accordance with the methodology set out in Articles 4 and 5. The provider shall communicate to the Commission any observation on such calculation within two weeks from receipt of the communication of that provisional determination.
4. At the latest by 30 November of each year, account taken of the observations referred to in paragraph 3, the Commission shall adopt and notify to each provider of designated service or services identified pursuant to Article 3 of this Regulation an implementing decision adopted in accordance with Article 43(3) of Regulation (EU) 2022/2065, determining the supervisory fee for the designated service or services provided by that provider, calculated in accordance with the methodology set out in Articles 4 and 5 of this Regulation. The implementing decision shall establish the amounts receivable as supervisory fee within the meaning of Article 98 of Regulation (EU, Euratom) 2018/1046 and set a deadline to pay the supervisory fees by 31 December of that year. Where a decision adopted pursuant to Article 33(4) of Regulation (EU) 2022/2065 is addressed to more than one legal person, all addressees of that decision shall be jointly and severally liable for the payment of the supervisory fee in respect of the designated service or services.

Article 7

Payment modalities and financial consequences in case of non-payment

1. All supervisory fees shall be payable in euro and in accordance with the payment references provided for in the implementing decision adopted pursuant to Article 6(4).
2. Any late payment, partial payment, non-payment or non-compliance with the conditions for payment as set out in the implementing decision referred to in Article 6(4) of this Regulation shall give rise to the recovery of the amount unpaid together with interest at the rate referred to in Article 99(2) of Regulation (EU, Euratom) 2018/1046. Those payments are without prejudice to the fines and periodic penalty payments applicable pursuant to Articles 74 and 76 of Regulation (EU) 2022/2065.

Article 8

Reporting of incurred costs and of the supervisory fees charged

1. By 31 March of each year n, the Commission shall report to the European Parliament and the Council on the amount of the overall annual costs incurred for the fulfilment of its tasks pursuant to Regulation (EU) 2022/2065 and the total amount of the annual supervisory fees charged pursuant to Article 6(4) of this Regulation in the preceding year (year n-1).
2. The report pursuant to paragraph 1 shall spell out the specific costs incurred for the fulfilment of the tasks referred to in Article 43(2) of Regulation (EU) 2022/2065 in accordance with the costs categories set out in Article 2(2) of this Regulation. The costs shall include any commitments undertaken during the year n-1, even if the payments implementing the commitments have not yet been performed.
3. The report pursuant to paragraph 1 shall indicate the overall amount of supervisory fees charged per provider of designated service or services, including the date of respective payments, any missing or late payment, on-going court's proceeding related to the implementing decisions referred to in Article 6(4) and recovery procedures referred to in Article 7(2) related to the supervisory fees charged, at the date of finalisation of the report.
4. The report shall indicate any costs incurred pursuant to paragraph 2 that exceeded the amount of estimated costs for year n-1, or any surplus of estimated costs for year n-1 compared to the costs incurred in that year pursuant to paragraph 2, as applicable.
5. The Commission shall publish the report pursuant to paragraph 1 on its website.

Article 9

Transitional provisions

1. Costs pursuant to Article 2(1) and (2) already incurred or planned for the period from 16 November 2022 until 31 December 2023 may be added to the first estimation of costs referring to the 2024 period pursuant to Article 6(1) unless already covered by initial appropriations voted by the European Parliament and the Council for the general budget of the Union for 2023.
2. The first report pursuant to Article 8 shall be adopted by the Commission by 31 March 2024 and shall encompass the period from 16 November 2022 until 31 December 2023. For the purpose of the identification of incurred costs pursuant to Article 8(2), the costs paid out of the appropriations referred to in paragraph 1 shall be indicated separately and they shall not be taken into account for the purpose of the balance referred to in Article 8(4).

Article 10

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 2.3.2023

For the Commission
The President
Ursula VON DER LEYEN