



**2018/0112(COD)**

26.11.2018

## **OPINION**

of the Committee on Legal Affairs

for the Committee on the Internal Market and Consumer Protection

on the proposal for a regulation of the European Parliament and of the Council  
on promoting fairness and transparency for business users of online  
intermediation services  
(COM(2018)0238 – C8-0165/2018 – 2018/0112(COD))

Rapporteur for opinion (\*): Francis Zammit Dimech

(\* ) Associated committee – Rule 54 of the Rules of Procedure

PA\_Legam

## SHORT JUSTIFICATION

The proposal for a regulation on promoting fairness and transparency for business users of online intermediation services (the “P2B” regulation) was made as a direct result of calls from Parliament in its resolution of 15 June 2017 on online platforms and the digital single market<sup>1</sup>.

In its opinion to that report, the Committee on Legal Affairs called for an appropriate and proportional regulatory framework that would guarantee responsibility, fairness, trust and transparency in platforms’ processes in order to avoid discrimination and arbitrariness towards business partners in relation to, inter alia, access to the service, appropriate and fair referencing, search results or the functioning of relevant application programming interfaces, on the basis of interoperability and compliance principles applicable to platforms.

Your rapporteur welcomes the proposal for a P2B regulation as the first endeavour to regulate in this area by any legislator, and proposes to make this instrument more balanced in certain respects.

As regards transparency for ranking, your rapporteur considers that a balance needs to be found with rules on competition. Platforms should therefore be required to disclose the principles underlying the parameters determining ranking, but not the algorithms themselves, which should be considered to be trade secrets.

It is similarly very important to distinguish between a transaction and the initiation of a transaction. A simple search for a product or service on a search engine should not be considered to be an initiation of a transaction but merely a request for information which could lead to the initiation of a transaction.

While your rapporteur welcomes the requirement for online intermediation services to take corrective measures by setting up internal redress mechanisms, mediation should not be a mandatory step before a business user may make use of court procedures.

Your rapporteur considers that this targeted instrument is a welcome first step to regulate in this area, but it must be borne in mind that many further aspects will have to be regulated in the future. It is therefore important to provide for an elaborate review process already in this instrument.

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<sup>1</sup> P8\_TA(2017)0272.

## AMENDMENTS

The Committee on Legal Affairs calls on the Committee on the Internal Market and Consumer Protection, as the committee responsible, to take into account the following amendments:

### Amendment 1

#### Proposal for a regulation

##### Recital 1

*Text proposed by the Commission*

(1) Online intermediation services are key enablers of entrepreneurship, trade and innovation, which can also improve consumer welfare and which are increasingly used by both the private and public sectors. They offer access to new markets and commercial opportunities allowing undertakings to exploit the benefits of the internal market. They also allow consumers in the Union to exploit those benefits, in particular by increasing their choice of goods and services *offered* online.

*Amendment*

(1) Online intermediation services are key enablers of ***digital trade and, in particular***, entrepreneurship, trade and innovation, which can also improve consumer welfare and which are increasingly used by both the private and public sectors. They offer access to new markets and commercial opportunities allowing undertakings to exploit the benefits of the internal market. They also allow consumers in the Union to exploit those benefits, in particular by increasing their choice of goods and services ***as well as by offering competitive prices*** online.

### Amendment 2

#### Proposal for a regulation

##### Recital 2

*Text proposed by the Commission*

(2) Online intermediation services can be crucial for the commercial success of undertakings who use such services to reach consumers. The growing intermediation of transactions through online intermediation services, fuelled by strong data-driven indirect network effects, lead to an increased dependence of such business users, including micro, small and medium-sized enterprises, on those

*Amendment*

(2) Online intermediation services can be crucial for the commercial success of undertakings who use such services to reach consumers. The growing intermediation of transactions through online intermediation services, fuelled by strong data-driven indirect network effects, lead to an increased dependence of such business users, including micro, small and medium-sized enterprises, on those

services in order for them to reach consumers. Given that increasing dependence, the providers of those services often have superior bargaining power, which enables them to effectively behave unilaterally in a way that can be unfair and that can be harmful to the legitimate interests of their businesses users and, indirectly, also of consumers in the Union.

services in order for them to reach consumers. Given that increasing dependence, the providers of those services often have superior bargaining power, which enables them to effectively behave unilaterally in a way that can be unfair and that can be harmful to the legitimate interests of their businesses users and, indirectly, also of consumers in the Union.

***It should thus be avoided that online intermediation services attain a dominant market position and undermine competition by using the power of network effects. It should also be avoided that by classifying workers as independent contractors, platforms may circumvent the requirements of labour law.***

### Amendment 3

#### Proposal for a regulation Recital 5

##### *Text proposed by the Commission*

(5) Online intermediation services and online search engines, as well as the **commercial** transactions facilitated by those services, have an intrinsic cross-border potential and are of particular importance for the proper functioning of the Union's internal market in today's economy. The potentially unfair and harmful trading practices of certain providers of those services in respect of business users and corporate website users hamper the full realisation of that potential and negatively affect the proper functioning of the internal market. In addition, the full realisation 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.

##### *Amendment*

(5) Online intermediation services and online search engines, as well as the transactions facilitated by those services, have an intrinsic cross-border potential and are of particular importance for the proper functioning of the Union's internal market in today's economy. The potentially unfair and harmful trading practices of certain providers of those services in respect of business users and corporate website users hamper the full realisation of that potential and negatively affect the proper functioning of the internal market. In addition, the full realisation 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.

## Amendment 4

### Proposal for a regulation

#### Recital 6

*Text proposed by the Commission*

(6) A uniform and targeted set of mandatory rules should therefore be established at Union level to ensure a fair, predictable, sustainable and trusted online business environment within the internal market by ensuring, in particular, that the business users of online intermediation services are afforded appropriate transparency as well as effective redress possibilities throughout the Union. Those rules should also provide for appropriate transparency as regards the ranking of corporate website users in the search results generated by online search engines. At the same, those rules should be such as to safeguard the important innovation potential of the wider online platform economy.

*Amendment*

(6) A uniform and targeted set of mandatory rules should therefore be established at Union level to ensure a fair, predictable, sustainable and trusted online business environment within the internal market by ensuring, in particular, that the business users of online intermediation services are afforded appropriate transparency as well as effective redress possibilities throughout the Union. Those rules should also provide for appropriate ***incentives to promote fair and proportionate business behaviour and transparency, especially*** as regards the ranking of corporate website users in the search results generated by online search engines, ***including voice assistants***. At the same, those rules should be such as to safeguard the important innovation potential of the wider online platform economy ***and allow for a healthy competition leading to increased consumer choice***.

*Justification*

*One of the characteristics of the online market is the quick raise and demise of business under the influence of platforms that can act as gatekeepers. Such role should be reduced as much as possible to one of neutral intermediaries thus benefiting the business and the consumer parts of the market.*

## Amendment 5

### Proposal for a regulation

#### Recital 7

*Text proposed by the Commission*

(7) Since online intermediation services and online search engines typically have a global dimension, this Regulation should apply to providers of those services regardless of whether they are established in a Member State or outside the Union, provided that two cumulative conditions are met. Firstly, the business users or corporate website users should be established in the Union. Secondly, the business users or corporate website users should, through the provision of those services, offer their goods or services to consumers located in the Union at least for part of the transaction. Such consumers should be located in the Union, but do not need to have their place of residence in the Union nor have the nationality of any Member State. Accordingly, this Regulation should not apply where the business users or corporate websites users are not established in the Union or where they are established in the Union but where they use online intermediation services or online search engines to offer goods or services exclusively to consumers located outside the Union or to persons who are not consumers.

*Amendment*

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**Amendment 6**

**Proposal for a regulation**

**Recital 8**

*Text proposed by the Commission*

(8) A wide variety of business-to-consumer commercial relations are intermediated online by providers operating multi-sided services that are essentially based on the same ecosystem-building business model. In order to capture the relevant services, online intermediation services should be defined

*Amendment*

(8) A wide variety of business-to-consumer commercial relations are intermediated online by providers operating multi-sided services that are essentially based on the same ecosystem-building business model. In order to capture the relevant services, online intermediation services should be defined

in a precise and technologically-neutral manner. In particular, the services should consist of information society services, which are characterised by the fact that they *aim to facilitate the initiating of direct* transactions between business users and consumers, irrespective of whether the transactions are ultimately concluded *either online*, on the online portal of the provider of the online intermediation services in question or that of the business user, *or offline*. In addition, the services should be provided on the basis of contractual relationships both between the providers and business users *and between the providers and the consumers*. Such a contractual relationship should be deemed to exist where both parties concerned express their intention to be bound in an unequivocal and verifiable manner, without an express written agreement necessarily being required.

in a precise and technologically-neutral manner. In particular, the services should consist of information society services, which are characterised by the fact that they *initiate* transactions between business users and consumers, irrespective of whether the transactions are ultimately concluded on the online portal of the provider of the online intermediation services in question or that of the business user. In addition, the services should be provided on the basis of contractual relationships both between the providers *of online intermediation services or between business users and consumers where providers act as intermediaries towards consumers*. Such a contractual relationship should be deemed to exist where both parties concerned express their intention to be bound in an unequivocal and verifiable manner, without an express written agreement necessarily being required. ***The purpose of this Regulation is to establish provisions relating to those information society services which, in addition to the above requirements, perform a function of "intermediation" in an online marketplace. The mere presence of advertising on a webpage should not in itself mean that the webpage falls under the scope of this Regulation.***

## Amendment 7

### Proposal for a regulation Recital 11

#### *Text proposed by the Commission*

(11) For reasons of consistency, the definition of online search engine used in this Regulation should be aligned with the definition used in Directive (EU) 2016/1148 of the European Parliament and of the Council<sup>21</sup>.

#### *Amendment*

(11) For reasons of consistency, the definition of online search engine used in this Regulation should be aligned with the definition used in Directive (EU) 2016/1148 of the European Parliament and of the Council<sup>21</sup>. ***However, it is clarified that this definition covers voice search as well as online search engines that directly return the information related to the***

***requested content. This Regulation does not apply to search functionalities which do not encompass, at least in principle, all websites, such as search functions within an online intermediation services or which is a feature of an operating system software.***

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<sup>21</sup> Directive (EU) 2016/1148 of the European Parliament and of the Council concerning measures for a high common level of security of network and information systems across the Union (OJ L 194, 19.7.2016, p. 1).

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## **Amendment 8**

### **Proposal for a regulation Recital 12**

*Text proposed by the Commission*

(12) In order to effectively protect business users where needed, this Regulation should apply ***where the terms and conditions of a contractual relationship, regardless of their name or form, are not individually negotiated by the parties to them. Whether or not terms and conditions were individually negotiated should be determined on the basis of an overall assessment, whereby the fact that certain provisions thereof may have been individually negotiated is, in itself, not decisive.***

*Amendment*

(12) In order to effectively protect business users where needed, this Regulation should apply regardless of ***whether the provider of an online intermediation service and a business user are parties to an agreement that they individually negotiated.***

## **Amendment 9**

### **Proposal for a regulation Recital 13**

*Text proposed by the Commission*

(13) To ensure that the general terms and conditions of a contractual relationship enable business users to determine the

*Amendment*

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commercial conditions for the use, termination and suspension of online intermediation services, and to achieve predictability regarding their business relationship, those terms and conditions should be drafted in clear and unambiguous language which is easily understood by an average business user. Terms and conditions should not be considered to have been drafted in clear and unambiguous language where they are vague, unspecific or lack detail on important commercial issues and thus fail to give business users a reasonable degree of predictability on the most important aspects of the contractual relationship.

commercial conditions for the use, termination and suspension of online intermediation services, and to achieve predictability regarding their business relationship, those terms and conditions should be drafted in clear and unambiguous language which is easily understood by an average business user. Terms and conditions should not be considered to have been drafted in clear and unambiguous language where they are vague, unspecific or lack detail on important commercial issues ***or allow for disproportionate decision-making power of the dominant side*** and thus fail to give business users a reasonable degree of predictability on the most important aspects of the contractual relationship ***such as the provision of grounds for suspending or terminating the provision of services for business users.***

## Amendment 10

### Proposal for a regulation

#### Recital 14

##### *Text proposed by the Commission*

(14) Ensuring transparency in the general terms and conditions can be essential to promoting sustainable business relationships and to preventing unfair behaviour to the detriment of business users. Providers of online intermediation services should therefore also ensure that the terms and conditions are easily available at all stages of the contractual relationship, including to prospective business users at the pre-contractual phase, and that any modifications to those terms are notified to business users within a set notice period which is reasonable and proportionate in light of the specific circumstances and which is at least 15 days. That notice period should not apply where, and to the extent that, it is waived in an unambiguous manner by the business

##### *Amendment*

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user concerned or where, and to the extent that, the need to implement the modification without respecting the notice period stems from a legal obligation incumbent on the service provider under Union or national law.

to the extent that, it is waived in an unambiguous manner by the business user concerned or where, and to the extent that, the need to implement the modification without respecting the notice period stems from a legal obligation incumbent on the service provider under Union or national law.

#### *Justification*

*While a certain degree of flexibility in treatment of business practices that might harm consumers is needed, clarity on the obligations and measures is a first step in preventing such practices.*

### **Amendment 11**

#### **Proposal for a regulation**

##### **Recital 12**

#### *Text proposed by the Commission*

(12) In order to effectively protect business users where needed, this Regulation should apply *where the terms and conditions of a contractual relationship*, regardless of *their name or form, are not* individually negotiated *by the parties to them. Whether or not terms and conditions were individually negotiated should be determined on the basis of an overall assessment, whereby the fact that certain provisions thereof may have been individually negotiated is, in itself, not decisive.*

### **Amendment 12**

#### **Proposal for a regulation**

##### **Recital 14 a (new)**

#### *Text proposed by the Commission*

#### *Amendment*

(12) In order to effectively protect business users where needed, this Regulation should apply regardless of *whether the provider of an online intermediation service and a business user are parties to an agreement that they* individually negotiated.

***(14 a) Intermediary service providers may modify their terms and conditions in***

*response to practices that can cause immediate harm to consumers. Such harmful practices can include fraud, spam, security issues, phishing, abuse of the consumer data or financial position, etc. Given the diversity of intermediaries and the content that business users distribute through them, such harmful practices may not always be provided for in specific terms by the intermediary service provider. In such cases, intermediary service providers are exempted from the 10-day notice period for application of the new terms and conditions.*

## Amendment 13

### Proposal for a regulation Recital 15

*Text proposed by the Commission*

(15) In order to protect business users it should be possible for a competent court to establish that non-compliant terms and conditions are not binding on the business user concerned, with effects *ex nunc*. Any such finding by a court should however only concern the specific provisions of the terms and conditions which are not compliant. The remaining provisions should remain valid and enforceable, in as far as they can be severed from the non-compliant provisions. Sudden modifications to existing terms and conditions may significantly disrupt business users' operations. In order to limit such negative effects on business users, and to discourage such behaviour, modifications made in contravention of the obligation to provide a set notice period, should therefore ***be null and void, that is, deemed to have never existed with effects erga omnes and ex tunc.***

*Amendment*

(15) In order to protect business users it should be possible for a competent court to establish that non-compliant terms and conditions are not binding on the business user concerned, with effects *ex nunc*. Any such finding by a court should however only concern the specific provisions of the terms and conditions which are not compliant. The remaining provisions should remain valid and enforceable, in as far as they can be severed from the non-compliant provisions. Sudden modifications to existing terms and conditions may significantly disrupt business users' operations. In order to limit such negative effects on business users, and to discourage such behaviour, modifications made in contravention of the obligation to provide a set notice period, should therefore ***enter into force only after the legal notice period has been completed and those at fault should be liable for damages.***

## Justification

*The usual penalty for faulty notice actions is the suspension of the deadline until such time that the legal requirements are satisfied. Nullifying the content of the changes to ToS based on deadlines is not a measure that takes into account the merits of the content therefore seems disproportionate.*

### Amendment 14

#### Proposal for a regulation

##### Recital 16

###### *Text proposed by the Commission*

(16) A provider of online intermediation services can have legitimate reasons to decide to suspend or terminate the provision of its services, in whole or in part, to a given business user, including by delisting individual goods or services of a given business user or effectively removing search results. **However**, given that such decisions can significantly affect the interests of the business user concerned, they should be properly informed of the reasons thereof. The statement of reasons should allow business users to ascertain whether there is scope to challenge the decision, thereby improving the possibilities for business users to seek effective redress where necessary. In addition, requiring a statement of reasons should help to prevent or remedy any unintended removal of online content provided by business users which the provider incorrectly considers to be illegal content, in line with Commission Recommendation (EU) No 2018/334<sup>22</sup>. The statement of reasons should identify the objective ground or grounds for the decision, based on the grounds that the provider had set out in advance in its terms and conditions, and refer in a proportionate manner to the relevant specific circumstances that led to that decision.

###### *Amendment*

(16) A provider of online intermediation services can have legitimate reasons to decide **to apply restrictions or sanctions to business users**, to suspend or terminate the provision of its services, in whole or in part, to a given business user, including by delisting individual goods or services of a given business user or effectively removing search results. **This could include violation of the terms and conditions, as well as business user violation which could be harmful to the consumer or to the platforms (for example, but not limited to: security issues, fraud, phishing, illegal and harmful content)**. Given that such decisions can significantly affect the interests of the business user concerned **as well as the exercise of fundamental rights business users enjoy, such as the freedom to conduct business and freedom of expression**, they should be properly informed of the reasons thereof. The statement of reasons should allow business users to ascertain whether there is scope to challenge the decision, thereby improving the possibilities for business users to seek effective redress where necessary. In addition, requiring a statement of reasons should help to prevent or remedy any unintended removal of online content provided by business users which the provider incorrectly considers to be illegal content, in line with Commission

Recommendation (EU) No 2018/334<sup>22</sup>. ***In some cases, the decision of the provider of an online intermediation service is based on notifications by third parties. These notifications can be abused by competitors. Commission Recommendation (EU) No 2018/334 requires such notifications to be sufficiently precise and adequately substantiated to enable the hosting provider to take an informed and diligent decision in respect of the content to which the notice relates. Providers of online intermediation services should therefore be required to pass on the contents of the notification to the business user in cases where a decision to suspend or terminate the provision of its services follows a notification from a third party, in order to allow the business user to easily refute obviously wrongful notices.*** The statement of reasons should identify the objective ground or grounds for the decision, based on the grounds that the provider had set out in advance in its terms and conditions, and refer in a proportionate manner to the relevant specific circumstances that led to that decision. ***Wherever possible a proportionate and gradual system should be put in place, including prior and timely notification before taking measures that result in severing the access of the business to its customers.***

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<sup>22</sup> Commission Recommendation (EU) No 2018/334 of 1 March 2018 on measures to effectively tackle illegal content online (OJ L 63, 6.3.2018, p. 50).

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<sup>22</sup> Commission Recommendation (EU) No 2018/334 of 1 March 2018 on measures to effectively tackle illegal content online (OJ L 63, 6.3.2018, p. 50).

## **Amendment 15**

### **Proposal for a regulation Recital 16 a (new)**

**(16 a) As providers of intermediation services often work with additional distribution channels of affiliate programs, transparency towards business users should be ensured in this respect. Business users should all have the right to make adjustments on channels where their offers are traded.**

## Amendment 16

### Proposal for a regulation

#### Recital 17

Text proposed by the Commission

(17) The ranking of goods and services by the providers of online intermediation services has an important impact on consumer choice and, consequently, on the commercial success of the business users offering those goods and services to consumers. Providers of online intermediation services should therefore outline the main parameters determining ranking beforehand, in order to improve predictability for business users, to allow them to better understand the functioning of the ranking mechanism and to enable them to compare the ranking practices of various providers. The notion of main parameter should be understood to refer to any general criteria, ***processes, specific signals incorporated into algorithms or other adjustment or demotion mechanisms*** used in connection with the ranking. The description of the main parameters determining ranking should also include an explanation of any possibility for business users to actively influence ranking against remuneration, as well as of the relative effects thereof. This description should provide business users with an adequate understanding of how the ranking mechanism takes account of the

Amendment

(17) The ranking of goods and services by the providers of online intermediation services has an important impact ***in terms of digital market competitiveness and*** on consumer choice and, consequently, on the commercial success of the business users offering those goods and services to consumers. Providers of online intermediation services should therefore outline the main parameters determining ranking beforehand, in order to improve predictability for business users, to allow them to better understand the functioning of the ranking mechanism and to enable them to compare the ranking practices of various providers. The notion of main parameter should be understood to refer to any general criteria used in connection with the ranking. The description of the main parameters determining ranking should also include an explanation of any possibility for business users to actively influence ranking against remuneration, as well as of the relative effects thereof. This description should provide business users with an adequate understanding of how the ranking mechanism takes account of the characteristics of the actual goods or services offered by the business user, and

characteristics of the actual goods or services offered by the business user, and their relevance to the consumers of the specific online intermediation services.

their relevance to the consumers of the specific online intermediation services.

## Amendment 17

### Proposal for a regulation

#### Recital 18

##### *Text proposed by the Commission*

(18) Similarly, the ranking of websites by the providers of online search engines, notably of those websites through which undertakings offer goods and services to consumers, has an important impact on consumer choice and the commercial success of corporate website users. Providers of online search engines should therefore provide a description of the main parameters determining the ranking of all indexed websites, including those of corporate website users as well as other websites. In addition to the characteristics of the goods and services and their relevance for consumers, this description should in the case of online search engines also allow corporate website users to obtain an adequate understanding of whether, and if so how and to what extent, certain design characteristics of the website used, such as their optimisation for display on mobile telecommunications devices, is taken into account. In the absence of a contractual relationship between providers of online search engines and corporate website users, that description should be available to the public in an obvious and easily accessible location on the relevant online search engine. To ensure predictability for corporate website users, the description should also be kept up to date, including the possibility that any changes to the main parameters should be made easily identifiable. Whilst *the providers are under no circumstances required* to disclose *any trade secrets as*

##### *Amendment*

(18) Similarly, the ranking of websites by the providers of online search engines, notably of those websites through which undertakings offer goods and services to consumers, has an important impact on consumer choice and the commercial success of corporate website users. Providers of online search engines should therefore provide a description of the main parameters determining the ranking of all indexed websites, including those of corporate website users as well as other websites. In addition to the characteristics of the goods and services and their relevance for consumers, this description should in the case of online search engines also allow corporate website users to obtain an adequate understanding of whether, and if so how and to what extent, certain design characteristics of the website used, such as their optimisation for display on mobile telecommunications devices, is taken into account. In the absence of a contractual relationship between providers of online search engines and corporate website users, that description should be available to the public in an obvious and easily accessible location on the relevant online search engine. To ensure predictability for corporate website users, the description should also be kept up to date, including the possibility that any changes to the main parameters should be made easily identifiable. Whilst *requirement* to disclose *ranking parameters should be without prejudice to*

**defined in** Directive (EU) 2016/943 of the European Parliament and of the Council<sup>23</sup> when complying with this requirement to disclose the main ranking parameters, the description given should at least be based on actual data on the relevance of the ranking parameters used.

Directive (EU) 2016/943 of the European Parliament and of the Council<sup>23</sup> **while taking into account the provisions on lawful acquisition, use and disclosure**, when complying with this requirement to disclose the main ranking parameters, the description given should at least be based on actual data on the relevance of the ranking parameters used. **For the avoidance of doubt, any obligation on online search engines to ensure that the description of the main parameters determining ranking is kept up to date should not involve requiring online search engines to reveal any trade secrets as defined in Article 2(1) of Directive (EU) 2016/943.**

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<sup>23</sup> Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure (OJ L 157, 15.6.2016, p. 1).

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<sup>23</sup> Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure (OJ L 157, 15.6.2016, p. 1).

## **Amendment 18**

### **Proposal for a regulation**

#### **Recital 19**

##### *Text proposed by the Commission*

(19) Where a provider of online intermediation services itself offers certain goods or services to consumers through its own online intermediation services, or does so through a business user which it controls, that provider may compete directly with other business users of its online intermediation services which are not controlled by the provider. In such situations, in particular, it is important that the provider of online intermediation services acts in a transparent manner and provides a description of any differentiated treatment, whether through legal,

##### *Amendment*

(19) Where a provider of online intermediation services itself offers certain goods or services to consumers through its own online intermediation services, or does so through a business user which it controls, that provider may compete directly with other business users of its online intermediation services which are not controlled by the provider. In such situations, in particular, it is important that the provider of online intermediation services acts in a transparent manner and provides a description of any differentiated treatment, whether through legal,

commercial or technical means, that it might give in respect of goods or services it offers itself compared to those offered by business users. To ensure proportionality, this obligation should apply at the level of the overall online intermediation services, rather than at the level of individual goods or services offered through those services.

commercial or technical means ***such as default settings***, that it might give in respect of goods or services it offers itself compared to those offered by business users. To ensure proportionality, this obligation should apply at the level of the overall online intermediation services, rather than at the level of individual goods or services offered through those services. ***Furthermore, consumers often rely on services configured by default without being informed about competing goods and services, and could face technical or economic barriers if they want to choose a competing service. Providers of online intermediation services should therefore not be allowed to provide any good or service under their direct or indirect control as a default option without first giving consumers the possibility to select among different competing options available when using the online intermediation service for the first time. The consumer should not be obliged to choose a default option. An online intermediation service provider's goods or services should be considered to compete with those of its business users where the good or service can be considered as interchangeable or substitutable by consumers using the online intermediation service.***

## Amendment 19

### Proposal for a regulation Recital 19 a (new)

*Text proposed by the Commission*

*Amendment*

***(19a) It is equally important that online intermediation service providers do not engage in unfair commercial practices (including commercial behaviour or the inclusion of unfair contractual terms) which have a materially detrimental impact on competition or on choice for consumers. The relative bargaining***

*strength of the online intermediary and the business user, along with any other relevant factors, should be considered in determining whether a commercial practice is unfair.*

## **Amendment 20**

### **Proposal for a regulation Recital 19 b (new)**

*Text proposed by the Commission*

*Amendment*

*(19b) For the purposes of this Regulation, a provider's service competes with those of its other business users if it is regarded as interchangeable or substitutable by consumers of the online intermediation service, including by reason of the characteristics, prices, or intended uses of the services.*

## **Amendment 21**

### **Proposal for a regulation Recital 19 c (new)**

*Text proposed by the Commission*

*Amendment*

*(19c) In certain cases, the asymmetry in bargaining power between online intermediation services and other business users results in a significant imbalance in the parties' rights and obligations under the applicable contract, causing harm to the business user. In such cases, the provider of online intermediation service should apply fair treatment to the business user, in such a way that they do not materially impair other business users' ability and freedom to do business. Given the high likelihood of harm to consumers inherent in situations where a provider of online intermediation services competes with other business users, including by reducing the consumers' choices,*

*increasing their costs, and withholding critical information from them, the obligation to provide fair treatment shall include ensuring that consumers who access services through the online intermediation service have the right and ability to select and use the services of their choice, without facing any undue burdens, such as where the provider ignores or overrides consumers' choices of default settings. A provider of online intermediation services also fails to provide fair treatment where it does not afford competing business users with all information necessary for them to achieve the same level and quality of interoperability with the online intermediation service, and any ancillary services, as are available to the provider itself, and where it implements practices that directly or indirectly provide technical or economic advantages to its own offerings that it denies to competing business users. Fair treatment also requires the provider to refrain from interfering in the commercial relationship between competing business users and consumers of their services, including by blocking or otherwise restricting the flow of information and communication between them, including advertising and marketing.*

## Amendment 22

### Proposal for a regulation Recital 19 d (new)

*Text proposed by the Commission*

*Amendment*

*(19d) Certain practices can be conclusively treated as unfair in all circumstances. The Platform Observatory should continuously review this list of practices and recommend updates to the Commission. As the market for online intermediation services evolves, the Commission should issue guidance on*

*practices that may comprise unfair commercial practices, including the circumstances in which specified practices might be deemed unfair.*

## Amendment 23

### Proposal for a regulation

#### Recital 20

*Text proposed by the Commission*

(20) The ability to access and use data, including personal data, can enable important value creation in the online platform economy. Accordingly, it is important that providers of online intermediation services provide business users with a clear description of the scope, nature and conditions of their access to and use of certain categories of data. The description should be proportionate and might refer to general access conditions, rather than an exhaustive identification of actual data, or categories of data, in order to enable business users to understand whether they can use the data to enhance value creation, including by possibly retaining third-party data services. Processing of personal data should comply with Regulation (EU) 2016/679 of the European Parliament and of the Council.<sup>24</sup>

*Amendment*

(20) The ability to access and use data, including personal data, can enable important value creation in the online platform economy. Accordingly, it is important that providers of online intermediation services provide business users with a clear description of the scope, nature and conditions of their access to and use of certain categories of data. The description should be proportionate and might refer to general access conditions, rather than an exhaustive identification of actual data, or categories of data, in order to enable business users to understand whether they can use the data to enhance value creation, including by possibly retaining third-party data services. ***This Regulation requires the online intermediation service providers to be transparent about what data they provide to their business users but does not establish any requirement to disseminate personal or non-personal data to the business users. In all cases, processing of personal data should comply with the Union legal framework on the protection of natural persons with regard to the processing of personal data, and on respect for private life and the protection of personal data in electronic communications, in particular Regulation (EU) 2016/679 of the European Parliament and of the Council<sup>24</sup>, Directive (EU) 2016/680<sup>24a</sup> and Directive 2002/58/EC<sup>24b</sup>. This Regulation should not require online intermediation service providers to share***

***personal data with third parties beyond what is set out in their privacy policies.***

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<sup>24</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (Text with EEA relevant) (OJ L 119, 4.5.2016, p. 1).

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<sup>24</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (Text with EEA relevant) (OJ L 119, 4.5.2016, p. 1).

<sup>24a</sup> ***Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ L 119, 4.5.2016, p. 89).***

<sup>24b</sup> ***Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ L 201, 31.7.2002, p. 37).***

## **Amendment 24**

### **Proposal for a regulation Recital 21**

#### *Text proposed by the Commission*

(21) Providers of online intermediation services might in certain cases restrict in the terms and conditions the ability of business users to offer goods or services to consumers under more favourable

#### *Amendment*

(21) Providers of online intermediation services might in certain cases restrict in the terms and conditions the ability of business users to offer goods or services to consumers under more favourable

conditions through other means than through those online intermediation services. In those cases, the providers concerned should set out the grounds for doing so, in particular with reference to the main economic, commercial or legal considerations for the restrictions. ***This transparency obligation should however not be understood as affecting the assessment of the legality of such restrictions under other acts of Union law or the law of Member States in accordance with Union law, including in the areas of competition and unfair commercial practices, and the application of such laws.***

## Amendment 25

### Proposal for a regulation Recital 21 a (new)

*Text proposed by the Commission*

conditions through other means than through those online intermediation services. In those cases, the providers concerned should set out the grounds for doing so, in particular with reference to the main economic, commercial or legal considerations for the restrictions ***and ensure that such restrictions are proportionate.***

*Amendment*

***(21 a) This Regulation should be without prejudice to intellectual property rights held by business users. Providers of online intermediation services should make use of these rights only upon explicit consent of the business user, if they have obtained a license from the business user or their licensee, or under applicable exceptions and limitations. The terms of use of such rights should be adhered to. The intellectual property rights of third parties should also be respected.***

## Amendment 26

### Proposal for a regulation Recital 22

*Text proposed by the Commission*

(22) In order to enable business users,

*Amendment*

(22) In order to enable business users,

including those whose use of the relevant online intermediation services might have been suspended or terminated, to have access to immediate, suitable and effective redress possibilities, providers of online intermediation services should provide for an internal complaint-handling system. That internal complaint-handling system should be aimed at ensuring that a significant proportion of complaints can be solved bilaterally by the provider of the online intermediation services and the relevant business user. In addition, ensuring that providers of online intermediation services publish information on the functioning and effectiveness of their internal complaint-handling system should help business users to understand the types of issues that can arise in the context of the provision of different online intermediation services and the possibility of reaching a quick **and** effective bilateral resolution.

including those whose use of the relevant online intermediation services might have been **restricted**, suspended or terminated, to have access to immediate, **proportionate**, suitable and effective redress possibilities, providers of online intermediation services should provide for an **effective and rapid** internal complaint-handling system. That internal complaint-handling system should be **transparent, simplified and non-discriminatory** aimed at ensuring that a significant proportion of complaints can be solved bilaterally by the provider of the online intermediation services and the relevant business user. In addition, ensuring that providers of online intermediation services publish information on the functioning and effectiveness of their internal complaint-handling system should help business users to understand the types of issues that can arise in the context of the provision of different online intermediation services and the possibility of reaching a quick, effective **and non-discriminatory** bilateral resolution.

## Amendment 27

### Proposal for a regulation

#### Recital 23

##### *Text proposed by the Commission*

(23) The requirements of this Regulation regarding the internal complaint-handling systems aim at allowing providers of online intermediation services a reasonable degree of flexibility when operating those systems and addressing individual complaints, so as to minimise any administrative burden. In addition, the internal complaint-handling systems should allow providers of online intermediation services to address, where necessary, in a proportionate manner any use in bad faith which certain business users might seek to make of those systems. In cases other than any alleged non-compliance with the legal

##### *Amendment*

(23) The requirements of this Regulation regarding the internal complaint-handling systems aim at allowing providers of online intermediation services a reasonable degree of flexibility when operating those systems and addressing individual complaints, so as to minimise any administrative burden. In addition, the internal complaint-handling systems should allow providers of online intermediation services to address, where necessary, in a proportionate manner any use in bad faith which certain business users might seek to make of those systems. In cases other than any alleged non-compliance with the legal

obligations of this Regulation, the internal complaint-handling systems should moreover not be open to complaints involving only negligible negative effects on the business user concerned. In light of the costs of setting up and operating such systems, it is appropriate to exempt from those obligations any providers of online intermediation services which constitute small enterprises, in line with the relevant provisions of Commission Recommendation 2003/361/EC<sup>25</sup>.

obligations of this Regulation, the internal complaint-handling systems should moreover not be open to complaints involving only negligible negative effects on the business user concerned. In light of the costs of setting up and operating such systems, it is appropriate to exempt from those obligations any providers of online intermediation services which constitute small enterprises, in line with the relevant provisions of Commission Recommendation 2003/361/EC<sup>25</sup>. ***The internal complaint-handling system should be based on principles of equal treatment and its use should not lead to any detrimental treatment of the business user.***

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<sup>25</sup> Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5.2003, p36).

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<sup>25</sup> Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5.2003, p36).

## Amendment 28

### Proposal for a regulation Recital 25

#### *Text proposed by the Commission*

(25) Providers of online intermediation services should bear a reasonable proportion of the total costs of the mediation, taking into account all relevant elements of the case at hand. To that aim, the mediator should suggest which proportion is reasonable in the individual case. ***However, that proportion should never be less than half of those costs.***

#### *Amendment*

(25) Providers of online intermediation services should bear a reasonable proportion of the total costs of the mediation, taking into account all relevant elements of the case at hand. To that aim, the mediator should suggest which proportion is reasonable in the individual case.

## Amendment 29

### Proposal for a regulation

#### Article 1

*Text proposed by the Commission*

##### Article 1

###### Subject-matter and scope

1. This Regulation lays down rules to ensure that business users of online intermediation services and corporate website users in relation to online search engines are granted appropriate transparency and effective redress possibilities.

2. This Regulation shall apply to online intermediation services and online search engines provided, or offered to be provided, to business users and corporate website users, respectively, that have their place of establishment or **residence** in the Union and that, through online intermediation services or online search engines, offer goods or services to consumers located in the Union, irrespective of the place of establishment or residence of the providers of those services.

*Amendment*

##### Article 1

###### Subject-matter and scope

1. This Regulation lays down rules to ensure that business users of online intermediation services and corporate website users in relation to online **and connected** search engines are granted appropriate **fairness**, transparency and effective redress possibilities.

2. This Regulation shall apply to online intermediation services and online search engines provided, or offered to be provided, to business users and corporate website users, respectively, that have their place of establishment or **are operating** in the Union and that, through online intermediation services or online search engines, offer goods or services to consumers located in the Union, irrespective of the place of establishment or residence of the providers of those services. ***This Regulation is without prejudice to sectoral measures taken at Union or national level, in compliance with Union law.***

## Amendment 30

### Proposal for a regulation

#### Article 2 – paragraph 1 – point 1

*Text proposed by the Commission*

(1) 'business user' means any natural or legal person which through online intermediation services offers goods or services to consumers for purposes relating to its trade, business, craft or profession;

*Amendment*

(1) 'business user' means any natural or legal person which through online intermediation services offers **or seeks to offer** goods or services to consumers for purposes relating to its trade, business,

craft or profession;

## Amendment 31

### Proposal for a regulation

#### Article 2 – paragraph 1 – point 2 – point a

*Text proposed by the Commission*

(a) they constitute information society services within the meaning of Article 1(1)(b) of Directive (EU) No 2015/1535 of the European Parliament and of the Council<sup>27</sup> ;

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<sup>27</sup> Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (OJ L 241, 17.9.2015, p. 1).

*Amendment*

(a) they constitute information society services within the meaning of Article 1(1)(b) of Directive (EU) No 2015/1535 of the European Parliament and of the Council<sup>27</sup> ***or they constitute device operating systems and in that capacity they act as intermediaries between online application developers and consumers;***

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<sup>27</sup> Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (OJ L 241, 17.9.2015, p. 1).

## Amendment 32

### Proposal for a regulation

#### Article 2 – point 2 – points b and c

*Text proposed by the Commission*

(b) ***they allow*** business users to offer goods or services to consumers, ***with a view to facilitating the*** initiating ***of*** direct transactions between those business users and consumers, ***irrespective of where those transactions are ultimately concluded;***

(c) they are provided to business users on the basis of contractual relationships between, ***on the one hand,*** the provider of

*Amendment*

(b) ***their primary purpose is to enable*** business users to offer goods or services to consumers ***by*** initiating direct ***online*** transactions between those business users and consumers ***on the online portal of the provider of the online intermediation services in question or by direct link to that of the business user.***

(c) they are provided ***in general*** to business users on the basis of contractual relationships between the provider of those

those services and, ***on the other hand, both those business users and the consumers to which those business users offer goods or services;***

services and business users ***who offer goods and services to consumers. For the purpose of this Regulation, such a contractual relationship shall also be deemed to exist where personal data or other data is provided***

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<sup>9</sup>Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (OJ L 241, 17.9.2015, p. 1).

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<sup>9</sup>Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (OJ L 241, 17.9.2015, p. 1).

### Amendment 33

#### Proposal for a regulation Article 2 – paragraph 1 – point 3 a (new)

*Text proposed by the Commission*

*Amendment*

***(3a) "operating system" means software, which, inter alia, handles the interface to peripheral hardware, schedules tasks, allocates storage, and presents a default interface to the user when no application program is running including a graphical user interface, whether such software is an integral part of consumer general purpose computer hardware, or else free-standing software intended to be run on consumer general purpose computer hardware; however it shall not mean an operating system loader, basic input/output system, or other firmware required at boot time or when installing the operating system;***

#### *Justification*

*Mobile devices' operating systems such as IOS or Android consist of software, which allows applications to work on specific devices (e.g. apps on a smartphone). Restrictions or changes deliberately imposed by device manufacturers or operating systems providers may limit the distribution and access to certain online content and services – often without an objective justification or through disproportionate methods – and could be at the users' expense. The definition of online intermediaries should thus be revised to explicitly include device*

*operating systems.*

## **Amendment 34**

### **Proposal for a regulation**

#### **Article 2 – paragraph 1 – point 5**

##### *Text proposed by the Commission*

(5) 'online search engine' means a digital service that allows users to perform searches of, ***in principle, all*** websites or websites in a particular language on the basis of a query on any subject in the form of a keyword, phrase or other input, and returns links in which information related to the ***requested content*** can be found;

##### *Amendment*

(5) 'online search engine' means a digital service, ***including inter alia digital interfaces and applications, including mobile applications with search functionality***, that allows users to ***input queries and*** perform searches of ***various*** websites or websites ***and mobile applications*** in a particular language on the basis of a query on any subject in the form of a keyword, phrase or other input (***by text, voice or any other means***), and returns ***content such as short texts, pictures, links, videos, audios***, in which information related to the ***search*** can be found;

## **Amendment 35**

### **Proposal for a regulation**

#### **Article 2 – paragraph 1 – point 7**

##### *Text proposed by the Commission*

(7) 'corporate website user' means any natural or legal person which uses websites to offer goods or services ***to consumers for purposes relating to its trade, business, craft or profession***;

##### *Amendment*

(7) 'corporate website user' means any natural or legal person which uses websites ***or otherwise connected means*** to offer goods or services;

##### *Justification*

*While websites are still the main gateway, applications and other means might soon meet the same challenges. As such, is better to include them now. The last part of the definition was removed as the nature of customers or the intent of the user are irrelevant for the rights and obligations set in this text.*

## Amendment 36

### Proposal for a regulation

#### Article 2 – paragraph 1 – point 8

*Text proposed by the Commission*

(8) 'ranking' means the relative prominence given to the goods or services offered to consumers by business users through online intermediation services, or to websites indexed **for consumers** by online search engines, as presented, organised or communicated **to those consumers** by the providers of online intermediation services or by providers of online search engines, respectively, irrespective of the technological means used for such presentation, organisation or communication;

*Amendment*

(8) 'ranking' means the relative prominence **in search results** given to the goods or services offered to consumers by business users through online intermediation services, or to websites indexed by online search engines, as presented, organised or communicated by the providers of online intermediation services or by providers of online search engines, respectively, irrespective of the technological means used for such presentation, organisation or communication;

## Amendment 37

### Proposal for a regulation

#### Article 2 – paragraph 1 – point 10

*Text proposed by the Commission*

(10) 'terms and conditions' means **all** terms, conditions, clauses **and other information, irrespective of their name or form**, which govern the contractual relationship between the provider of online intermediation services and their business users **and are unilaterally determined by the provider of online intermediation services**.

*Amendment*

(10) 'terms and conditions' means **the** terms, conditions **and** clauses which govern the contractual relationship between the provider of online intermediation services and their business users.

## Amendment 38

### Proposal for a regulation

#### Article 2 – paragraph 1 – point 10 a (new)

*Text proposed by the Commission*

*Amendment*

**(10a) ‘device operating system’ is software that allows smartphones, computers and other devices to run applications and programs.**

## **Amendment 39**

### **Proposal for a regulation Article 3 – paragraph 1**

#### *Text proposed by the Commission*

1. Providers of online intermediation services shall ensure that their terms and conditions:
- (a) are drafted in ***clear and unambiguous*** language;
  - (b) are easily available for business users at all stages of their commercial relationship with the provider of online intermediation services, including in the pre-contractual stage;
  - (c) set out the ***objective*** grounds for decisions to suspend or terminate, in whole or in part, the provision of their online intermediation services to business users.

#### *Amendment*

1. Providers of online intermediation services shall ensure that their terms and conditions:
- (a) are ***fair and proportionate and*** drafted in ***plain and intelligible*** language;
  - (b) are easily available for business users at all stages of their commercial relationship with the provider of online intermediation services, including in the pre-contractual stage;
  - (c) set out the grounds ***consistent with those terms and conditions*** for decisions to ***sanction, restrict***, suspend or terminate, in whole or in part, the provision of their online intermediation services to business users. ***In making such decisions, online intermediation service providers must respect the fundamental rights enshrined in the Charter of Fundamental Rights of the EU and comply with the principle of proportionality.***
    - (ca) ***inform business users on their additional distribution channels and potential affiliate programmes that they are going to serve with the offer of business users. Business users shall be granted the right to ask for their removal from such additional distribution channels.***

## Amendment 40

### Proposal for a regulation Article 3 – paragraph 3

#### *Text proposed by the Commission*

3. Providers of online intermediation services shall notify to the business users concerned any **envisaged** modification of their terms and conditions.

The envisaged modifications shall not be implemented before the expiry of a notice period which is reasonable and proportionate to the nature and extent of the envisaged modifications and to their consequences for the business user concerned. That notice period shall be at least **15** days from the date on which the provider of online intermediation services notifies the business users concerned about the envisaged modifications.

The business user concerned may, **either** by means of a written statement **or a clear affirmative action**, waive the notice period referred to in the second subparagraph.

## Amendment 41

### Proposal for a regulation Article 3 – paragraph 4

#### *Amendment*

3. Providers of online intermediation services shall **without delay** notify **in a durable medium** to the business users concerned any **material** modification of their terms and conditions **or to the functionality, interoperability or other main performance features of the platform such as its accessibility, continuity and security, that adversely impacts the business user or affects them in a non-negligible manner.**

The envisaged modifications shall not be implemented before the expiry of a notice period which is reasonable and proportionate to the nature and extent of the envisaged modifications and to their consequences for the business user concerned. That notice period shall be at least **10** days from the date on which the provider of online intermediation services notifies the business users concerned about the envisaged modifications.

The business user concerned may by means of a written statement waive the notice period referred to in the second subparagraph. **The business user shall be entitled to terminate their agreement free of any charges within 10 days from the receipt of the notice, where such modifications are materially detrimental to the business user.**

*Text proposed by the Commission*

4. Modifications to terms and conditions implemented by a provider of online intermediation services contrary to the provisions of paragraph 3 shall be null and void.

*Amendment*

4. Modifications to terms and conditions implemented by a provider of online intermediation services contrary to the provisions of paragraph 3 shall be null and void, ***as established by a competent court, for the remainder of the notice period, without prejudice to the validity of the remaining provisions, which shall remain valid in so far as they can be separated from the non-compliant provisions.***

**Amendment 42**

**Proposal for a regulation  
Article 3 – paragraph 5**

*Text proposed by the Commission*

5. Paragraph 3 shall not apply where a provider of online intermediation services is subject to a legal obligation which requires it to modify its terms and conditions in a manner which does not allow it to respect the notice period referred to in the second subparagraph of paragraph 3.

*Amendment*

5. ***The notice period set out in paragraph 3 shall not apply:***

***(a) where a provider of online intermediation services is subject to a legal obligation which requires it to modify its terms and conditions in a manner which does not allow it to respect the notice period referred to in the second subparagraph of paragraph 3;***

***(b) if the terms and conditions have been modified in order to protect the legitimate interests of users and consumers or the operation of the online intermediation service as such; or***

***(c) if a modification to the functionality, interoperability or other main performance features of the***

*platform is necessary to protect the legitimate interests of users and consumers or the operation of the online intermediation service as such.*

## Amendment 43

### Proposal for a regulation

#### Article 3 – paragraph 5 a (new)

*Text proposed by the Commission*

*Amendment*

**5a.** *The online intermediation service provider shall ensure that business users retain full control over their brands. The brand attribution to the business user should be recognizable to the consumer throughout all the stages of the intermediation process.*

## Amendment 44

### Proposal for a regulation

#### Article 4

*Text proposed by the Commission*

*Amendment*

#### Article 4

#### Article 4

##### Suspension and termination

##### **Restriction,** suspension and termination

1. Where a provider of online intermediation services decides to suspend **or** terminate, in whole or in part, the provision of its online intermediation services to a given business user, it shall provide the business user concerned, without undue delay, with a statement of reasons for that decision.

1. Where a provider of online intermediation services decides to **sanction perceived misconduct, or** suspend, terminate **or otherwise restrict**, in whole or in part, the provision of its online intermediation services to a given business user, it shall provide the business user concerned, without undue delay, with a **detailed** statement of reasons for that decision. **Such decision shall be proportionate.**

2. The statement of reasons referred to in paragraph 1 shall contain a reference to the specific facts or circumstances that led

2. The statement of reasons referred to in paragraph 1 shall contain a reference to the specific facts or circumstances that led

to the decision of the provider of online intermediation services, as well as a reference to the applicable *objective* ground or grounds for that decision referred to in Article 3(1)(c).

to the decision of the provider of online intermediation services, as well as a reference to the applicable ground or grounds for that decision referred to in Article 3(1)(c). ***Where the restriction, suspension or termination results from a third party notification, the contents of said notification shall be included in the statement of reasons.***

***2a. Providers of online intermediation services and providers of search engines shall not be permitted to suspend, terminate or otherwise restrict the provision of its online intermediation services to a business user which provides services that compete with those of the provider of online intermediation services, unless necessary for the following reasons:***

***(a) to avoid any unreasonable burden to the online intermediation service provider caused by the business user;***

***(b) to address any non-compliance by the business user with applicable laws or for the online intermediation service provider to comply with applicable laws;***

***(c) for privacy or security reasons.***

***2b. Restriction, termination and suspension shall be, where possible and proportionate, preceded by a notification and opportunity to clarify or re-establish compliance.***

## Amendment 45

### Proposal for a regulation Article 5

*Text proposed by the Commission*

Article 5

Ranking

1. Providers of online intermediation services shall set out in their terms and

*Amendment*

Article 5

Ranking

1. Providers of online intermediation services shall set out in their terms and

conditions the *main* parameters determining ranking and the reasons for the relative importance of those *main parameters as opposed to other* parameters.

Where those *main* parameters include the possibility to influence ranking against any direct or indirect remuneration paid by business users to the provider of online intermediation services concerned, that provider of online intermediation services shall also include in its terms and conditions a description of those possibilities and of the effects of such remuneration on ranking.

2. Providers of online search engines shall set out *for corporate website users the main* parameters determining ranking, by providing an easily and publicly available description, drafted in clear and unambiguous language on the online search engines of those providers. They shall keep that description up to date.

conditions the parameters determining ranking and the reasons for the relative importance of those parameters.

Where those parameters include the possibility to influence ranking against any direct or indirect remuneration paid by business users to the provider of online intermediation services concerned, that provider of online intermediation services shall also include in its terms and conditions a description of those possibilities and of the effects of such remuneration on ranking.

***When displaying the results, the online intermediation service shall disclose close to each ranking whether and to what extent it has been influenced against direct or indirect remuneration, contractual or direct ownership relations.***

***1a. Where a provider of an online intermediation service has altered the ranking order in a specific case or delisted a particular product or service offered by a business user following a third party notification, the provider shall provide the business user concerned, without undue delay, with a statement of reasons for that decision. The statement of reasons shall include a reference to the specific facts and circumstances that have led to the decision of the provider of online intermediation services, as well as the contents of the notification.***

2. Providers of online search engines shall set out *the* parameters determining ranking *of all indexed websites and the reasons for the relative importance of those parameters*, by providing an easily and publicly available description, drafted in clear and unambiguous language on the online search engines of those providers. They shall keep that description up to date *with regard to material changes that can reasonably be expected to affect corporate website users in a non-negligible manner.*

***By exception, in cases where the disclosure of all parameters would be against fair, reasonable and proportionate practices, only main parameters shall be always presented in detail. The parameters determining ranking shall not be applied in a discriminatory manner.***

***2a. Where a provider of an online search engine has altered the ranking order in a specific case or delisted a particular website following a third party notification, the provider shall offer the possibility for the business user to inspect the contents of the notice in a publicly accessible online database. The provider of an online search engine shall offer corporate business users a complaints and redress mechanism to correct delistings or changes to the ranking order following a wrongful notification.***

3. The descriptions referred to in paragraphs 1 and 2 shall be sufficient to enable the business users or corporate website users to obtain an adequate understanding of whether, and if so how and to what extent, the ranking mechanism takes account of the following:

- (a) the characteristics of the goods and services offered to consumers through the online intermediation services or the online search engine;
- (b) the relevance of those characteristics for those consumers;
- (c) as regards online search engines, the design characteristics of the website ***used by corporate website users.***

4. ***Providers of online intermediation services and providers of online search engines shall, when complying with the requirements of this Article, not be required to disclose any trade secrets as defined in Article 2(1) of Directive (EU) 2016/943.***

3. The descriptions referred to in paragraphs 1 and 2 shall be sufficient to enable the business users or corporate website users to obtain an adequate understanding of whether, and if so how and to what extent, the ranking mechanism takes account of the following:

- (a) the characteristics of the goods and services offered to consumers through the online intermediation services or the online search engine;
- (b) the relevance of those characteristics for those consumers;
- (c) as regards online search engines, the design characteristics of the website ***indexed.***

4. This Article ***shall be without prejudice to*** Directive (EU) 2016/943.

***4a. Providers of online intermediation services and providers of online search engines shall make sure that fulfilling***

*transparency obligations under this Article does not lead to a consumer harm following manipulation of ranking by business users and corporate business websites.*

*4b. The transparency requirements referred to in this Article shall be accompanied by guidelines issued by the Commission regarding the conditions under which an online intermediation service complies with this Article. The Commission shall ensure the due compliance with these requirements.*

## Amendment 46

### Proposal for a regulation Article 6

*Text proposed by the Commission*

#### Article 6

##### Differentiated treatment

1. Providers of online intermediation services shall include in their terms and conditions a description of any differentiated treatment which they give, or may give, in relation to, on the one hand, goods or services offered to consumers through those online intermediation services by either that provider itself or any business users which that provider controls and, on the other hand, other business users.

*Amendment*

#### Article 6

##### Differentiated treatment

1. Providers of online intermediation services shall include in their terms and conditions a description of any differentiated treatment which they give, or may give, in relation to, on the one hand, goods or services offered to consumers through those online intermediation services by either that provider itself or any business users which that provider controls and, on the other hand, other business users.

*1 a. Providers of online search engines should set out for corporate website users a description of any differentiated treatment which they give, or may give, in relation to, on the one hand, goods or services offered to consumers through those online search engine services by either that provider itself or any corporate website users which that provider controls and, on the other hand, other corporate website users.*

**1b. In relation to, on the one hand, goods or services offered to consumers through those online intermediation services by either that provider itself or any business users which that provider controls and, on the other hand, other business users, providers of online intermediation services shall use proportionate, fair and transparent practices.**

2. The description referred to in paragraph 1 shall cover at least, where applicable, any differentiated treatment through specific measures taken by, or the behaviour of, the provider of the online intermediation services relating to any of the following:

- (a) access that the provider, or that the business users which that provider controls, may have to any personal data or other data, or both, which business users or consumers provide for the use of the online intermediation services concerned or which are generated through the provision of those services;
- (b) ranking;
- (c) any direct or indirect remuneration charged for the use of the online intermediation services concerned;
- (d) access to, or conditions for use of, services that are directly connected or ancillary to the online intermediation services concerned.

2. The description referred to in paragraph 1 **and 2** shall cover at least, where applicable, any differentiated treatment through specific measures taken by, or the behaviour of, the provider of the online intermediation services **or the provider of online search engines** relating to any of the following:

- (a) access that the provider, or that the business users which that provider controls, may have to any personal data or other data, or both, which business users or consumers provide for the use of the online intermediation services concerned or which are generated through the provision of those services;
- (b) ranking **and default settings**;
- (c) any direct or indirect remuneration charged for the use of the online intermediation services **or online search engine services** concerned
- (d) access to, or conditions for use of, services that are directly connected or ancillary to the online intermediation services **or online search engine services** concerned.

**2a. Providers of online intermediation services that provide, directly or indirectly through businesses under their control, goods or services to consumers that compete with those provided by its business users, shall allow consumers to freely choose which good or service to use as default when using the online intermediation service.**

**2b. When displaying the results, the online intermediation service shall disclose close to each product or service to which it gave differentiated treatment, in a well recognisable manner whether it has been influenced against direct or indirect remuneration, contractual or direct ownership relationships.**

## **Amendment 47**

### **Proposal for a regulation Article 6 a (new)**

*Text proposed by the Commission*

*Amendment*

#### *Article 6 a*

##### *Unfair commercial practices*

**1. The provider of online intermediation services shall not engage in unfair commercial practices. A practice shall constitute an unfair commercial practice if the practice leads to situations where there is a materially detrimental impact on competition and consumer choice. In assessing whether a trading practice is unfair, account shall be taken of the following factors:**

**(a) the market position of the provider of online intermediation services and the business user; and**

**(b) whether there is a significant imbalance in the parties' negotiating abilities which results in the provider of online intermediation services imposing an unreasonable burden on the business user in its terms and conditions or its commercial practices.**

**2. Directive 2005/29/EC shall apply mutatis mutandis.**

**3. Annex I provides a non-exhaustive lists of commercial practices which shall be regarded as unfair within the meaning**

*of this Regulation. This Annex shall apply in all Member States and periodically be reviewed by the Commission's expert group to the EU Observatory on the Online Platform Economy. The expert group may provide recommendations on further commercial practices, which should be considered as unfair within the meaning of this Regulation.*

## Amendment 48

### Proposal for a regulation Article 7

*Text proposed by the Commission*

#### Article 7

##### Access to data

1. Providers of online intermediation services shall include in their terms and conditions a description of the technical and contractual access, or absence thereof, of business users to any personal data or other data, or both, which business users or consumers provide for the use of the online intermediation services concerned or which are generated through the provision of those services.

2. Through the description referred to in paragraph 1, providers of online intermediation services shall adequately inform **business users** at least of the following:

(a) whether the provider of online intermediation services has access to personal data or other data, or both, which business users or consumers provide for the use of those services or which are generated through the provision of those services, and if so, to which categories of such data and under what conditions;

*Amendment*

#### Article 7

##### Access to data

1. Providers of online intermediation services **and online search engines** shall include in their terms and conditions a description of the technical and contractual access, or absence thereof, of business users to any personal data or other data, or both, which business users, **corporate website users** or consumers provide for the use of the online intermediation services **or online search engines** concerned or which are generated through the provision of those services.

2. Through the description referred to in paragraph 1, providers of online intermediation services **or online search engines** shall adequately inform **the public** at least of the following:

(a) whether the provider of online intermediation services **or online search engines** has access to personal data or other data, or both, which business users, **corporate website users** or consumers provide for the use of those services or which are generated through the provision of those services, and if so, to which categories of such data and under what

(b) whether a business user has access to personal data or other data, or both, provided by that business user in connection to his or her use of the online intermediation services concerned or generated through the provision of those services to that business user and the consumers of his or her goods or services, and if so, to which categories of such data and under what conditions;

(c) whether, in addition to point (b), a business user has access to personal data or other data, or both, including in aggregated form, provided by or generated through the provision of the online intermediation services to all of the business users and consumers thereof, and if so, to which categories of such data and under what conditions.

conditions;

(b) whether a business user has access to personal data or other data, or both, provided by that business user in connection to his or her use of the online intermediation services *or online search engines* concerned or generated through the provision of those services to that business user and the consumers of his or her goods or services, and if so, to which categories of such data and under what conditions;

(c) whether, in addition to point (b), a business user has access to personal data or other data, or both, including in aggregated form, provided by or generated through the provision of the online intermediation services *or online search engines* to all of the business users and consumers thereof, and if so, to which categories of such data and under what conditions;

*(ca) whether in case of a breach of contractual obligations or in case of a market failure by the provider of online intermediation services, business users have the right to access and to retrieve the data, or some categories of data, that they have submitted to the provider.*

*2a. Business users shall ensure that the data of their goods and services, in particular all elements of the price, which they submit to providers of online intermediation services are accurate and that the data are adequate to allow them to respect their legal obligations, in particular vis-a-vis the consumer.*

*2b. Providers of online intermediation services shall grant each business user access to anonymised consumer data, in a machine readable commonly used and standardised format, which are generated through the facilitation of a transaction between consumers and the business user concerned. This obligation is without prejudice to the obligations with which online intermediation services must comply under the applicable data*

*protection and privacy rules.*

*2c. Without prejudice to relevant Union law applicable to the protection of personal data and privacy, providers of online intermediation services shall grant business users access to all the data they have acquired as a result of the commercial activity of the respective business user.*

*2d. Without prejudice to relevant Union law applicable to the protection of personal data and privacy, providers of online search engines shall grant corporate website users access to all the data they have acquired as a result of the activity of the respective corporate website*

*2e. The data referred to in paragraphs 2c and 2d shall be provided in a machine readable commonly used and standardised format.*

*2f. Providers of online intermediation services shall, upon request from a consumer of its services, grant access to the personal or other data, or both, generated directly or indirectly by the activity of the consumer, to a third party designated by the consumer. Such access shall be granted under fair, reasonable and non-discriminatory terms.*

## Amendment 49

### Proposal for a regulation Article 8

*Text proposed by the Commission*

#### Article 8

Restrictions to offer different conditions through other means

1. Where, in the provision of their services, providers of online intermediation services restrict the ability of business

*Amendment*

#### Article 8

Restrictions to offer different conditions through other means

1. ***Providers of online intermediation services shall not restrict the ability of business users to offer the same goods***

users to offer the same goods and services to consumers under different conditions through other means than through those services, they shall include grounds for that restriction in their terms and conditions and make those grounds easily available to the public. Those grounds shall include the main economic, commercial or legal considerations for those restrictions.

2. ***The obligation set out in paragraph 1*** shall not affect any prohibitions or limitations in respect of the imposition of such restrictions that result from the application of other Union rules or from national rules that are in accordance with Union law and to which the providers of the online intermediation services are subject.

***and services to consumers under different or the same conditions through other online intermediation services.*** Where, in the provision of their services, providers of online intermediation services restrict the ability of business users to offer the same goods and services to consumers under different conditions through other means than through those services, they shall include grounds for that restriction in their terms and conditions and make those grounds easily available to the public. Those grounds shall include the main economic, commercial or legal considerations for those restrictions. ***The restrictions shall be proportionate, temporary and represent a legitimate interest of the provider.***

2. ***This Regulation*** shall not affect any prohibitions or limitations in respect of the imposition of such restrictions that result from the application of other Union rules or from national rules that are in accordance with Union law and to which the providers of the online intermediation services are subject. ***In particular, the risks pertaining to the practices referred to under paragraph 1 to create price collusion among providers of online intermediation services shall be closely scrutinised.***

2a. ***The obligation set out in paragraph 1 shall not result in the restriction of intellectual property rights, as enjoyed by their holders.***

## Amendment 50

### Proposal for a regulation

#### Article 9 – paragraph 1 – subparagraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

***The internal complaint-handling system shall be based on principles of equal treatment and its use shall not lead to any detrimental treatment of the business***

*user.*

### *Justification*

*As any disagreement can lead to punitive measures it is desirable that there are safeguards to prevent that.*

#### **Amendment 51**

##### **Proposal for a regulation**

##### **Article 9 – paragraph 2 – point c**

###### *Text proposed by the Commission*

(c) communicate to the complainant the outcome of the internal complaint-handling process, in an individualised manner and drafted in clear and unambiguous language.

###### *Amendment*

(c) communicate to the complainant ***without delay*** the outcome of the internal complaint-handling process, in an individualised manner, ***giving suitable justification*** and drafted in clear and unambiguous language.

#### **Amendment 52**

##### **Proposal for a regulation**

##### **Article 9 – paragraph 4 – subparagraph 1**

###### *Text proposed by the Commission*

Providers of online intermediation services shall ***annually establish and make easily available to the public information*** on the ***functioning and effectiveness*** of their internal ***complaint-handling system***.

###### *Amendment*

Providers of online intermediation services shall ***provide an annual report*** on the ***use*** of their internal ***complaint-handling systems, outlining the main types of problems businesses may face when using the online intermediation service***.

#### **Amendment 53**

##### **Proposal for a regulation**

##### **Article 9 – paragraph 4 – subparagraph 2**

###### *Text proposed by the Commission*

That information shall include the total number of complaints lodged, the ***subject-matter of the*** complaints, ***the*** time period

###### *Amendment*

That information shall include the total number of complaints lodged, the ***main types of*** complaints ***and the average*** time

needed to process the complaints *and the decision taken on the complaints*.

period needed to process the complaints.

## Amendment 54

### Proposal for a regulation Article 9 – paragraph 5

*Text proposed by the Commission*

5. The provisions of this Article shall not apply to providers of online intermediation services that are small enterprises within the meaning of Article 2 (2) of the Annex to Recommendation 2003/361/EC<sup>29</sup>.

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<sup>29</sup> Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5/2003, p. 36).

*Amendment*

5. The provisions of this Article shall not apply to providers of online intermediation services that are small enterprises within the meaning of Article 2 (2) of the Annex to Recommendation 2003/361/EC<sup>29</sup> **during the first three years or start up phase of their business operations**.

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<sup>29</sup> Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5/2003, p. 36).

### *Justification*

*An exemption is more appropriate when small businesses are establishing themselves. After that, it is likely that they will be expected by the market and consumers to comply with the standards of larger companies in any case.*

## Amendment 55

### Proposal for a regulation Article 10

*Text proposed by the Commission*

Article 10  
Mediation

1. Providers of online intermediation services **shall** identify in their terms and conditions one or more mediators with

*Amendment*

Article 10  
Mediation

1. Providers of online intermediation services **shall aim to** identify in their terms and conditions one or more mediators with

which they are willing to engage to attempt to reach an agreement with business users on the settlement, out of court, of any disputes between the provider and the business user arising in relation to the provision of the online intermediation services concerned, **including complaints that** could not be resolved by means of the internal complaint-handling system referred to in Article 9.

Providers of online intermediation services may only identify mediators providing their mediation services from a location outside the Union where it is ensured that the business users concerned are not effectively deprived of the benefit of any legal safeguards laid down in Union law or the law of the Member States as a consequence of the mediators providing those services from outside the Union.

2. The mediators referred to in paragraph 1 shall meet the following requirements:

- (a) they are impartial and independent;
- (b) their mediation services are affordable for an average business user of the online intermediation services concerned;
- (c) they are capable of providing their mediation services in the language of the terms and conditions which govern the contractual relationship between the provider of online intermediation services and the business user concerned;
- (d) they are easily accessible either physically in the place of establishment or residence of the business user, or remotely using communication technologies;
- (e) they are capable of providing their mediation services without undue delay;
- (f) they have a sufficient understanding of general business-to-business commercial relations, allowing them to contribute effectively to the attempt to settle the disputes.

### 3. ***Providers of online intermediation***

which they are willing to engage to attempt to reach an agreement with business users on the settlement, out of court, of any disputes between the provider and the business user arising in relation to the provision of the online intermediation services concerned, **which** could not be resolved by means of the internal complaint-handling system referred to in Article 9.

Providers of online intermediation services may only identify mediators providing their mediation services from a location outside the Union where it is ensured that the business users concerned are not effectively deprived of the benefit of any legal safeguards laid down in Union law or the law of the Member States as a consequence of the mediators providing those services from outside the Union.

2. The mediators referred to in paragraph 1 shall meet the following requirements:

- (a) they are impartial and independent;
- (b) their mediation services are affordable for an average business user of the online intermediation services concerned;
- (c) they are capable of providing their mediation services in the language of the terms and conditions which govern the contractual relationship between the provider of online intermediation services and the business user concerned;
- (d) they are easily accessible either physically in the place of establishment or residence of the business user, or remotely using communication technologies;
- (e) they are capable of providing their mediation services without undue delay;
- (f) they have a sufficient understanding of general business-to-business commercial relations, allowing them to contribute effectively to the attempt to settle the disputes.

### 3. ***The parties involved in the***

*services* shall engage in good faith in any attempt to reach an agreement through the mediation of any of the mediators which they identified in accordance with paragraph 1, with a view to reaching an agreement on the settlement of the dispute.

4. Providers of online intermediation services shall bear a reasonable proportion of the total costs of mediation in each individual case. A reasonable proportion of those total costs shall be determined, on the basis of a suggestion by the mediator, by taking into account all relevant elements of the case at hand, in particular the relative merits of the claims of the parties to the dispute, the conduct of the parties, as well as the size and financial strength of the parties relative to one another. ***However, providers of online intermediation services shall in any case bear at least half of the total cost.***

5. Any attempt to reach an agreement through mediation on the settlement of a dispute in accordance with this Article shall not affect the rights of the providers of the online intermediation services and of the business users concerned to initiate judicial proceedings at any time during or after the mediation process.

*mediation* shall engage in good faith in any attempt to reach an agreement through the ***voluntary*** mediation of any of the mediators which they identified in accordance with paragraph 1, with a view to reaching an agreement on the settlement of the dispute ***within a time period of no longer than 25 days from commencement of the mediation, unless fulfilling this deadline would constitute an unreasonable burden taking into account the complexity of the dispute. In this case, an agreement should be reached within a time period of no longer than 90 days.***

4. Providers of online intermediation services ***and business users*** shall bear a reasonable proportion of the total costs of mediation in each individual case. A reasonable proportion of those total costs shall be determined, on the basis of a suggestion by the mediator, by taking into account all relevant elements of the case at hand, in particular the relative merits of the claims of the parties to the dispute, the conduct of the parties, as well as the size and financial strength of the parties relative to one another. ***Should the mediator, however, find that the business user is acting in bad faith or is seeking to abuse the mediation process, it can decide to make the business user bear more than half of the total cost.***

5. Any attempt to reach an agreement through mediation on the settlement of a dispute in accordance with this Article shall not affect the rights of the providers of the online intermediation services and of the business users concerned to initiate judicial proceedings at any time ***before***, during or after the mediation process. ***Initiation of judicial proceedings shall not be conditional on the initiation of mediation process.***

***5 a. Providers of online intermediation services shall annually establish and make easily accessible to the general public information on the functioning and effectiveness of mediation related to the***

*activities. Those reports shall include at least information on the total number of mediation cases, the subject matter of the complaints, the time period needed to process the complaints and the decision taken on the complaint.*

## Amendment 56

### Proposal for a regulation Article 12

*Text proposed by the Commission*

#### Article 12

Judicial proceedings by representative organisations or associations and by public bodies

1. Organisations and associations that have a legitimate interest in representing business users or in representing corporate website users, as well as public bodies set up in Member States, shall have the right to take action before national courts in the Union, in accordance with the rules of the law of the Member State where the action is brought, to stop or prohibit any non-compliance by providers of online intermediation services or by providers of online search engines with the *relevant* requirements laid down in this Regulation.

2. Organisations or associations shall have the right referred to in paragraph 1 only where, at the time of bringing the

*Amendment*

#### Article 12

Judicial proceedings by representative organisations or associations and by public bodies

1. ***Without prejudice to Article 80 of Regulation (EU) 2016/679 and after all the other options to settle a dispute between a platform and a business user provided for in Articles 9 and 10 of this Regulation have been exhausted,*** organisations and associations that have a ***genuine long-standing and*** legitimate interest in representing business users or in representing corporate website users ***and that are authorised and supervised by appropriate Member State public bodies,*** as well as public bodies set up in Member States, shall have the right to take action before national courts in the Union, in accordance with the rules of the law of the Member State where the action is brought, to stop or prohibit any non-compliance by providers of online intermediation services or by providers of online search engines with the ***information, non-discrimination and access to data*** requirements laid down in this Regulation.

2. Organisations or associations shall have the right referred to in paragraph 1 only where, at the time of bringing the

action, **they** meet all of the following requirements:

(a) they are properly constituted according to the law of a Member State;

(b) they pursue objectives that are in the collective interest of the group of business users or corporate website users that they represent;

(c) they are of a non-profit making character.

In Member States where such public bodies have been set up, those public bodies shall have the right referred to in paragraph 1, where they are charged with defending the collective interests of business users or corporate website users or with ensuring compliance with the requirements laid down in this Regulation, in accordance with the national law of the

action **and for the duration of the action, they continue to** meet all of the following requirements:

(a) they are properly constituted according to the law of a Member State **and hold a current qualified entity licence issued by the relevant public body of that Member State;**

(b) they pursue objectives, **publically stated in their statute or other relevant governance document**, that are in the collective interest of the group of **a majority of** business users or corporate website users that they represent, **which group must consist of at least 10 independent business users or corporate website users;**

(c) they are of a non-profit making character **and are transparent about the source of funding for bringing and continuing the action and can demonstrate that they have sufficient financial resources to represent the best interests of their business or corporate website users and to meet any adverse costs should the action fail.**

**(ca) they have a governance structure that provides for independence from third parties and has internal procedure to prevent conflict of interest, in case of funding received from third parties;**

**(cb) they are transparent about the source of funding;**

**(cc) they have sufficient financial and human resources, as well as legal expertise to represent the best interests of their business or corporate website users;**

In Member States where such public bodies have been set up, those public bodies shall have the right referred to in paragraph 1, **and shall be entitled to issue the required licence to an organisation or association**, where they are charged with defending the collective interests of business users or corporate website users or with ensuring compliance with the

Member State concerned.

requirements laid down in this Regulation, in accordance with the national law of the Member State concerned.

***Member States shall ensure that representative organisations or associations make publicly available annual activity reports. Those reports shall include at least the following information relating to both domestic and cross-border representative actions:***

- (a) the number of action launched and the main types of complaints made;***
- (b) the number (the rate of percentage) of court decisions in favour of business users or corporate website users;***
- (c) the number (the rate or percentage) of representative actions which were discontinued and, if known, the reasons for their discontinuation;***
- (d) the average time taken to resolve a representative action;***

***Where a Member State public body issues a qualified entity licence to an organisation or association, that public body shall be responsible for regularly reviewing the status and conduct of that organisation or association to ensure that it is complying with the requirements of this Article. The Member State public body shall immediately revoke the qualified entity licence of any organisation or association found not to be in compliance with the requirements of this Article.***

***The compliance by an organisation or an association with the criteria referred to in this paragraph is without prejudice to the right of the court or administrative authority to examine whether the purpose of the organisation or the association justifies its taking action in a specific case in accordance with paragraph 1.***

***2a. The right referred to in paragraph 1 shall be without prejudice to the rights***

*referred to in Directive XXXX/XX/EU (reference to the Directive on representative actions for the protection of the collective interests of consumers, and repealing Directive 2009/22/EC, (COM(2018)184)).*

3. The right referred to in paragraph 1 shall be without prejudice to the rights of business users and corporate website users to individually take action before competent national courts, in accordance with the rules of the law of the Member State where the action is brought, to address any non-compliance by providers of online intermediation services with the relevant requirements laid down in this Regulation.

3. The right referred to in paragraph 1 shall be without prejudice to the rights of business users and corporate website users to individually take action before competent national courts, in accordance with the rules of the law of the Member State where the action is brought, to address any non-compliance by providers of online intermediation services with the relevant requirements laid down in this Regulation.

***3a. Member States may prohibit that private third party funders receive any direct or indirect financial benefit through the litigation process or decision;***

## **Amendment 57**

### **Proposal for a regulation Article 13 – paragraph 1**

#### *Text proposed by the Commission*

1. The Commission shall encourage the drawing up of codes of conduct by providers of online intermediation services and by organisations and associations representing them, intended to contribute to the proper application of this Regulation, taking account of the specific features of the various sectors in which online intermediation services are provided, as well as of the specific characteristics of micro, small and medium-sized enterprises.

#### *Amendment*

1. The Commission shall encourage the drawing up of codes of conduct by providers of online intermediation services and by organisations and associations representing them, ***together with business users and the organisations and associations representing them, that are*** intended to contribute to the proper application of this Regulation, taking account of the specific features of the various sectors in which online intermediation services are provided, as well as of the specific characteristics of micro, small and medium-sized enterprises. ***In particular, codes of conducts shall address interoperability, barriers to***

*switching and data portability.*

## **Amendment 58**

### **Proposal for a regulation Article 13 a (new)**

*Text proposed by the Commission*

*Amendment*

#### *Article 13a*

##### *Competent authorities and enforcement*

**1. Each Member State shall designate a competent authority at national level, which shall be responsible for monitoring and enforcing compliance with this Regulation and have the following powers:**

- (a) to initiate and conduct investigations on its own initiative or based on a complaint;**
- (b) to require online intermediaries and providers of online search engines to provide all necessary information in order to carry out investigations;**
- (c) to take a decision establishing an infringement of the prohibitions laid down in this Regulation and require the provider of online intermediation services or online search engine provider to cease the infringement;**
- (d) to impose a pecuniary fine on the provider. The fine shall be effective, proportionate and dissuasive taking into account the nature, duration and gravity of the infringement; and**
- (e) to publish its decisions and report annually on its activities under this Regulation.**

**2. A business user, corporate website user or an organisation or association which meets the first three requirements of paragraph 2 of article 12 may address a complaint to the competent authority of the relevant Member State. The competent**

*authority shall ensure, if so requested by the complainant, the confidentiality of the identity of the complainant and of any other information, in respect of which the complainant considers disclosure harmful to its interests. The complainant shall identify such information in a possible request for confidentiality.*

*3. Member States shall ensure that competent authorities cooperate effectively with each other and provide each other mutual assistance in investigations that have a cross-border dimension.*

*4. Competent authorities and national competition authorities, where these do not coincide, shall provide each other with the information necessary for the application of the provisions of this Regulation. In respect of the information exchanged, the receiving authority shall ensure the same level of confidentiality as the originating authority.*

## **Amendment 59**

### **Proposal for a regulation Article 13 b (new)**

*Text proposed by the Commission*

*Amendment*

#### *Article 13b*

##### *Applicable law and jurisdiction*

*In contracts concluded by business users having their habitual residence in a Member State, or where the fulfilment of the contract is to take place in one or more Member States, the following shall apply:*

*(a) the protection afforded to business users in this Regulation shall apply regardless of the law applicable to other aspects of the contract by way of choice of the parties or otherwise; and*

*(b) unless the contract includes the rules of this Regulation, a choice of competent court shall only be valid if it designates a court in:*

*(i) the Member State where the business user has its habitual residence;*  
*or*

*(ii) a Member State where the fulfilment of the contract is to take place.*

## **Amendment 60**

### **Proposal for a regulation Article 13 c (new)**

*Text proposed by the Commission*

*Amendment*

#### *Article 13c*

*Information required from providers of  
online intermediation services*

*1. Member States shall ensure that providers of online intermediation services provide all the information necessary for competent authorities to monitor and enforce compliance with the provisions of this Regulation, to assist the Commission in drawing up Guidelines as set out in Article 6 and to support the role of the Observatory in completing its tasks, set out in Article 2 of the Commission Decision of 26 April 2018 on setting up the group of experts for the Observatory on the Online Platform Economy.*

*2. Such information requirements shall include:*

*(a) the main parameters determining ranking of offers and their relative importance presented to the consumer as result of his search query;*

*(b) whether the third party offering the goods, services or digital content is a trader or not, on the basis of the declaration of that third party to the online intermediary service provider;*

*(c) whether consumer rights stemming from Union consumer legislation apply or not to the contract concluded;*

*(d) where the contract is concluded with a trader, which trader is responsible for ensuring the application of consumer rights stemming from Union consumer legislation in relation to the contract. This requirement is without prejudice to the responsibility that the provider of online intermediation services may have or may assume with regard to specific elements of the contract; and*

*(e) whether and how algorithms or automated decision making were used, to present offers or determine prices, including personalised pricing techniques. Member States may maintain or introduce in their national law additional information requirements and liability rules for contracts concluded on online marketplaces.*

*3. Undertakings shall provide such information promptly upon request and in conformity with the timescales and level of detail required. The information requested shall be proportionate to the performance of that task. The competent authority shall give the reasons justifying its request for information.*

*4. Where information is considered confidential by a competent authority in accordance with Union and national rules on business confidentiality or the protection of personal data, the competent authorities concerned shall ensure such confidentiality.*

## **Amendment 61**

### **Proposal for a regulation Article 13 d (new)**

*Text proposed by the Commission*

*Amendment*

*Article 13d*

*Liability rules*

*Online intermediation services and not business users should be held liable for misleading information that business users have given to online intermediation services, if the business users have notified the online intermediation service about the misleading nature of the information provided. Online intermediation services should also be liable if they are the authors of misleading statements regarding the business users or the goods and services offered by the business users.*

**Amendment 62**

**Proposal for a regulation**

**Article 14 – paragraphs 1 and 2**

*Text proposed by the Commission*

1. By [date: **three** years after the date of entry into force], and subsequently every **three** years, the Commission shall evaluate this Regulation and report to the European Parliament, the Council and the European Economic and Social Committee.

2. **The first evaluation of this Regulation shall be carried out, in particular, with a view to assessing the compliance with, and impact on the online platform economy of, the obligations laid down in Articles 5, 6, 7 and 8, and whether additional rules, including regarding enforcement, may be required to ensure a fair, predictable, sustainable and trusted online business environment within the internal market.**

*Amendment*

1. By [date: **two** years after the date of entry into force], and subsequently every **two** years, the Commission shall evaluate this Regulation and report to the European Parliament, the Council and the European Economic and Social Committee. **Where appropriate, the Commission shall submit a legislative proposal to amend this Regulation, particularly in order to ensure that the objectives set out in paragraph 2 are met.**

2. **The review shall at least include the assessment of:**

*(a) the effectiveness of this Regulation, including the thresholds defined in paragraphs 4 to 6 of Article 1;*

*(b) the effectiveness of established codes of conduct to improve fairness and transparency;*

*(c) the need to more effectively tackle potentially harmful practices in commercial transactions between online search engines and their business users, particularly with regard to the issues identified in Article 2 (b) of the Commission Decision C(2018)2393 on setting up the group of experts for the Observatory on the Online Platform Economy;*

*(d) possible impacts of potentially harmful practices on consumers;*

*(e) the need to include operating systems in the scope of this Regulation;*

*(f) the need to update the list of unfair commercial practices.*

#### **Amendment 63**

##### **Proposal for a regulation Article 15 – paragraph 2**

*Text proposed by the Commission*

2. It shall apply from [date: **six** months following the day of its publication].

*Amendment*

2. It shall apply from [date: **twelve** months following the day of its publication].

#### **Amendment 64**

##### **Proposal for a regulation Annex I (new)**

*Text proposed by the Commission*

*Amendment*

***Annex I***

***Unfair commercial practices***

***Terms and conditions shall be regarded as unfair commercial practice within the meaning of this Regulation if they***

- require the business user to use the online intermediation service provider's ancillary services, including payment services, without the option to use any alternative method in circumstances where this leads to a material detriment to the business user;***
- burden the business user with a unilateral liability clause which causes an unfair transfer of risk;***
- impose retroactive contract clauses which are detrimental to the business user;***
- maintain the legal right to use the business user's confidential information after the contract between the online intermediation services provider and the business user has expired;***
- require business users to accept clauses of exclusivity as regards the choice of law which are outside the Union's jurisdiction;***
- prohibit the business user from also using a competing online intermediation service.***

## PROCEDURE – COMMITTEE ASKED FOR OPINION

<b>Title</b>	Promoting fairness and transparency for business users of online intermediation services
<b>References</b>	COM(2018)0238 – C8-0165/2018 – 2018/0112(COD)
<b>Committee responsible</b> Date announced in plenary	IMCO 28.5.2018
<b>Opinion by</b> Date announced in plenary	JURI 28.5.2018
<b>Associated committees - date announced in plenary</b>	13.9.2018
<b>Rapporteur</b> Date appointed	Francis Zammit Dimech 9.7.2018
<b>Discussed in committee</b>	24.9.2018                      11.10.2018
<b>Date adopted</b>	20.11.2018
<b>Result of final vote</b>	+:                      24 -:                      0 0:                      0
<b>Members present for the final vote</b>	Max Andersson, Joëlle Bergeron, Jean-Marie Cavada, Kostas Chrysogonos, Mady Delvaux, Laura Ferrara, Lidia Joanna Geringer de Oedenberg, Sajjad Karim, Sylvia-Yvonne Kaufmann, Gilles Lebreton, António Marinho e Pinto, Emil Radev, Julia Reda, Evelyn Regner, Pavel Svoboda, József Szájer, Axel Voss, Francis Zammit Dimech, Tadeusz Zwiefka
<b>Substitutes present for the final vote</b>	Geoffroy Didier, Pascal Durand, Jytte Guteland, Virginie Rozière, Kosma Złotowski

## FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

24	+
ALDE	Jean-Marie Cavada, António Marinho e Pinto
ECR	Sajjad Karim, Kosma Złotowski
EFDD	Joëlle Bergeron, Laura Ferrara
ENF	Gilles Lebreton
GUE/NGL	Kostas Chrysogonos
PPE	Geoffroy Didier, Emil Radev, Pavel Svoboda, József Szájer, Axel Voss, Francis Zammit Dimech, Tadeusz Zwiefka
S&D	Mady Delvaux, Lidia Joanna Geringer de Oedenberg, Jytte Guteland, Sylvia-Yvonne Kaufmann, Evelyn Regner, Virginie Rozière
VERTS/ALE	Max Andersson, Pascal Durand, Julia Reda

0	-

0	0

**Key to symbols:**

+ : in favour

- : against

0 : abstention