REPORT


Committee on the Internal Market and Consumer Protection

Rapporteur: Christel Schaldemose

Rapporteur for the opinion (*): Francis Zammit Dimech, Committee on Legal Affairs

(*) Associated committee – Rule 54 of the Rules of Procedure
### Symbols for procedures

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(The type of procedure depends on the legal basis proposed by the draft act.)

### Amendments to a draft act

**Amendments by Parliament set out in two columns**

Deletions are indicated in *bold italics* in the left-hand column. Replacements are indicated in *bold italics* in both columns. New text is indicated in *bold italics* in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

**Amendments by Parliament in the form of a consolidated text**

New text is highlighted in *bold italics*. Deletions are indicated using either the ▌ symbol or strikeout. Replacements are indicated by highlighting the new text in *bold italics* and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.
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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION


(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2018)0238),

- having regard to Article 294(2) and Article 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0165/2018),

- having regard to Article 294(3) of the Treaty on the Functioning of the European Union,

- having regard to the opinion of the European Economic and Social Committee of 19 September 2018¹,

- after consulting the Committee of the Regions,

- having regard to Rule 59 of its Rules of Procedure,

- having regard to the report of the Committee on the Internal Market and Consumer Protection and the opinions of the Committee on Legal Affairs, the Committee on Industry, Research and Energy and the Committee on Transport and Tourism (A8-0444/2018),

1. Adopts its position at first reading hereinafter set out;

2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;

3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

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 entrepreneurship and new business models, 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 pricing online. However, the potential legal uncertainty that may arise from the emergence of new technologies should be addressed.

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 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,

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 the self-employed and micro, small and medium-sized enterprises, on those services in order for them to reach consumers. Given that increasing dependence, which could also affect large businesses in addition to microenterprises and small and medium-sized enterprises, the providers of those services often have superior bargaining power. If this superior bargaining power
indirectly, also of consumers in the Union. If a dominant online intermediary service is misused, it can enable 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 but significantly, also to those of consumers in the Union. Consumers have embraced the online platform economy and a competitive, fair, and transparent online ecosystem where companies behave responsibly is also essential for consumer welfare. Where dominant online intermediation services become gatekeepers of information, choice and prices, the consumers also suffer. Moreover, lack of transparency and legal uncertainty in the online platform economy, including in business to business relations, could diminish consumer trust in the online economy. This Regulation should improve the fairness and transparency for business users of online intermediation services, which is ultimately to the benefit of consumers. However, the direct consequences to consumers of new business models and technological developments are addressed in Commission Proposal for a Directive of the European Parliament and of the Council amending Council Directive 93/13/EEC of 5 April 1993, Directive 98/6/EC of the European Parliament and of the Council, Directive 2005/29/EC of the European Parliament and of the Council and Directive 2011/83/EU of the European Parliament and of the Council as regards better enforcement and modernisation of EU consumer protection rules\(^a\).

\(^a\) COD(2018)0090
(3) Similarly, online search engines can be important sources of Internet traffic for undertakings which offer goods or services to consumers through websites and can therefore significantly affect the commercial success of such corporate website users offering their goods or services online in the internal market. In this regard, the ranking of websites by providers of online search engines, including of those websites through which corporate website users offer their goods and services to consumers, has an important impact on consumer choice and the commercial success of those corporate website users. Even in the absence of a contractual relationship with corporate website users, providers of online search engines can therefore effectively behave unilaterally in a way that can be unfair and that can be harmful to the legitimate interests of corporate website users and, indirectly, also of consumers in the Union.

Amendment 4

Proposal for a regulation
Recital 3 a (new)

(3 a) In some cases, operating systems may hold a role as intermediaries between business users and consumers. Since the definition of online intermediation services in this Regulation should be understood to be technologically neutral and to capture services regardless of their degree of integration with the software and any hardware used to provide them, where operating systems act as online
intermediation services within the meaning of this Regulation, the providers of those operating systems should also be covered by the obligations laid down on providers of online intermediation services in this Regulation.

Amendment 5

Proposal for a regulation
Recital 4

Text proposed by the Commission

(4) The dependence of business users on online intermediation services also leads to a situation in which business users often have limited possibilities to seek redress where unilateral actions of the providers of those services lead to a dispute. In many cases, those providers do not offer accessible and effective internal complaint-handling systems. Existing alternative out-of-court dispute settlement mechanisms can also be ineffective for a variety of reasons, including a lack of specialised mediators and business users' fear of retaliation.

Amendment

(4) The nature of the relationship between business users on and online intermediation services may also leads to situations in which business users often have limited possibilities to seek redress where unilateral actions of the providers of those services lead to a dispute. In many cases, those providers do not offer accessible and effective internal complaint-handling systems. Existing alternative out-of-court dispute settlement mechanisms can also be ineffective for a variety of reasons, including a lack of specialised mediators and business users' fear of retaliation.

Amendment 6

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

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, who abuse
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. Their position in respect of business users and corporate website users and the lack of adequate redress mechanisms hamper the full realisation of that potential and negatively affect the proper functioning of the internal market and the emergence of new market players. 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 7
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 time, 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 assistance services. At the same time, those rules should be such as to recognize and safeguard the important innovation potential of the wider online platform economy and allow for healthy competition leading to increased consumer choice.
Amendment 8

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

(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. In accordance with Regulation (EC) No 1215/2012 of the European Parliament and of the Council and Regulation (EC) No 593/2008 of the European Parliament and of the Council, this would mean that the online intermediation services and online search engines have directed activities to consumers located in one or more Member States, irrespective of their location within the Union. 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. The rules relating to choice of law and choice of court in contractual
matters in international and Union law have been conceived in relation to the typical commercial contracts negotiated to the letter between the parties and their legal representatives. It can be questioned to what extent these rules are appropriate in relation to the specific situation of agreements for platforms and in general to agreements in the digital era. This question ought to be given further consideration.

Amendment 9

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 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

Amendment

(8) A wide variety of business-to-consumer 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, meaning that there is no requirement for any contractual relationship between the business users and consumers as a precondition for an online intermediation service falling within the scope of this Regulation. Services where the facilitating of the initiating of direct transactions between those business users and consumers is of marginal character only, meaning that even if it might in a limited
being required.

number of cases be possible to interpret the service as having facilitated the initiation, a direct transaction between certain business users and consumers, should not be included, as this would not be the aim of the service. Where services habitually facilitate such transactions, the facilitating of initiating of direct transactions might not be understood to be of marginal character only. 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.

Such a contractual relationship between the providers of online intermediation services and consumers should also be deemed to exist in cases where the services are supplied to the consumer against the provision of personal data or other data by the consumer.

Amendment 10

Proposal for a regulation
Recital 9

Text proposed by the Commission

(9) Examples of online intermediation services covered by this Regulation should consequently include online e-commerce market places, including collaborative ones on which business users are active, online software applications services and online social media services. However, this Regulation should not apply to online advertising serving tools or online advertising exchanges which are not provided with the aim of facilitating the initiation of direct transactions and which

Amendment

(9) Examples of online intermediation services covered by this Regulation should consequently include online e-commerce market places, including collaborative ones on which business users are active, online software applications services such as application stores, voice assistance services, and online social media services. It should apply to such services regardless of emerging or future developments altering their technological or commercial design, including for example their
do not involve a contractual relationship with consumers. This Regulation should also not apply to online payment services, since they do not themselves meet the applicable requirements but are rather inherently auxiliary to the transaction for the supply of goods and services to the consumers concerned.

**Amendment 11**

**Proposal for a regulation**

**Recital 9 a (new)**

*Text proposed by the Commission*

(9 a) *In certain cases, distinguishing between business users and non-business users of online intermediation services may be complicated. Such a distinction is important, since business users who offer goods or services to consumers should also be under stricter obligations towards consumers. In line with the Commission Proposal for a Directive of the European Parliament and of the Council amending Council Directive 93/13/EEC of 5 April 1993, Directive 98/6/EC of the European Parliament and of the Council, Directive 2005/29/EC of the European Parliament and of the Council and Directive 2011/83/EU of the European Parliament and of the Council as regards better enforcement and modernisation of EU consumer protection rules¹a, it should not be in the discretion of the provider of an online intermediation service to distinguish whether a user is a business user or a non-business user. Rather, the users of online intermediation services*
should have the possibility to express whether they are business users or not, and in the case of business users, fulfil their stricter obligations towards consumers.

Amendment 12
Proposal for a regulation
Recital 9 b (new)

Text proposed by the Commission

(9 b) The definition of ancillary operating systems should capture operating systems which are essential for controlling a mobile device, which are closely linked to an online intermediation service and that online intermediation service controls the main channel through which application may be installed, and where the development and updating of that operating system is indirectly or directly provided or controlled by the provider of the linked online intermediation service. This definition of ancillary operating systems should apply to services regardless of emerging or future developments altering their technological or commercial design, including for example the use of voice control.

Amendment 13
Proposal for a regulation
Recital 10

Text proposed by the Commission

(10) In line with the relevant case-law of the Court of Justice of the European Union and in light of the fact that the dependent position of business users has been
observed principally in respect of online intermediation services that serve as a gateway to consumers in the form of natural persons, the notion of consumer used to delineate the scope of this Regulation is to be understood as referring solely to natural persons, where they are acting for purposes which are outside their trade, business, craft or profession.

Amendment 14
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\(^1\).

Amendment

(11) The definition of online search engine used in this Regulation should be broader than the definition used in Directive (EU) 2016/1148 of the European Parliament and of the Council\(^1\). Considering the quick pace of innovation, the definition should be technology-neutral. In particular, the definition should be understood to also encompass vocal requests.

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**Amendment 15**

**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.

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**Amendment 16**

**Proposal for a regulation**

**Recital 12 a (new)**

_text proposed by the Commission_

(12 a) _Providers of online intermediation services may provide or control other services or software, which could in some cases create a possibility for those software or services to be used to circumvent obligations laid down on providers of online intermediation services in this Regulation. While not extending the scope of this Regulation and the requirements laid down herein to those software or services, the providers of online intermediation services should not use those software or services to circumvent any obligations laid down on online intermediation services. Control within this Regulation should be understood as being within the meaning of Article 3(2) of Council Regulation (EC) No. 139/2004, that is, that control should be constituted by rights, contracts or any_
other means which, either separately or in combination and having regard to the considerations of fact or law involved, confer the possibility of exercising decisive influence on an undertaking. This decisive influence could be exercised in particular by ownership, the right to use all or part of the assets on an undertaking, or the rights or contract which confer decisive influence on the composition, voting or decisions of the organs of an undertaking.

Amendment 17
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 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.

Amendment

(13) To ensure that the general terms and conditions of a contractual relationship enable business users to determine the 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 intelligible language which is easily understood by an average business user. Terms and conditions should not be considered to have been drafted in clear and intelligible 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. Moreover, language that is misleading in the choice of phrasing should not be considered clear and intelligible.
Amendment 18
Proposal for a regulation
Recital 13 a (new)

Text proposed by the Commission

(13 a) To ensure not only transparency but also fairness in the relationships between providers of online intermediation services and their business users, the general terms and conditions should also be fair and proportionate taking into consideration the nature of the activities of the provider of the online intermediation service and the business user. Terms and conditions would not be considered to be fair and proportionate where, for example, those terms and conditions grossly deviate from good commercial conduct in the particular economic activity in which the online intermediation service operates, or go against the principles of good faith and fair dealing. In assessing these general requirements, the nature and purpose of the contract, the circumstances of the case and the usages and practices of the commercial activity should also be taken into account by the relevant enforcement authorities.

Amendment 19
Proposal for a regulation
Recital 13 b (new)

Text proposed by the Commission

(13 b) In order to ensure that business users have sufficient clarity regarding where, and to whom, their goods or services are being marketed, providers of online intermediation services should ensure transparency towards their business users regarding any additional channels and potential affiliate.
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 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. Conversely, the notice periods should not apply where, and to the extent that, they are waived in an unambiguous manner by the business user concerned or where, 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, and in cases where such a change to a phone number or an address of the provider. By way of exception, the notice periods should not apply where, and to the extent that, they are waived in an unambiguous manner by the business user concerned or where, 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, and in cases where
the provider acts to address dangers which could harm or pose security problems for the service, to their consumers or to other users, since given the diversity of content that business users distribute through online intermediation services, unforeseen dangers and practices could arise in ways that require immediate action. Business users should be entitled to terminate their agreement within 15 days from the receipt of the notice of any modification which they consider being detrimental to them.

Amendment 21
Proposal for a regulation
Recital 14 a (new)

Text proposed by the Commission

(14 a) In general, submitting new or updating goods or services to the online intermediation services should be considered clear affirmative action by the business user. However, since modifications of terms and conditions could in some cases require significant changes from the business user to comply with the new terms and conditions, the business users should not be obliged to leave their goods and services without updates, for example on content of services, while the business user prepares for complying with the new terms and conditions. As such, in cases where the notice period is 30 days because the modifications to the terms and conditions require the business user to make significant technical adjustments to their goods or services, the notice period should not be considered automatically waived where the business user submits new or updates goods and services. The provider of online intermediation services should expect the modifications to terms and conditions to require the business user to make significant technical adjustments.
where, for example, entire features of the online intermediation service that business users had access to are removed or added, or where business users may need to re-program their goods and services to be able to continue operating on the platform. In cases where multiple changes to terms and conditions are notified to the business users at once, only the change reasonably expected to require significant technical adjustments from the business user should be subject to the 30 days’ notice period and to the exception to the automatic waiving of the notice period.

Amendment 22

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 and to provide legal certainty for both sides, it should be possible for a competent court to establish that non-compliant terms and conditions are null and void, 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 23

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. 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 suspend, restrict 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. It can also be under a legal obligation to remove certain content, or to suspend, restrict or terminate the provision of its services in whole or in part. However, given that such decisions can significantly affect the interests of the business user concerned, they should be properly informed in advance of the suspension, restriction or termination, except for in cases where a provider of online intermediation services is under a legal obligation to suspend, restrict or terminate its services immediately. There could also be cases in which the provider of online intermediation services is not under a legal obligation, such as a product recall initiated by market surveillance authorities, to terminate its services, but where the provider nevertheless has reasonable doubts regarding the safety of a product or service, counterfeiting, fraud, or suitability of the product or service to minors. In such cases, it should be possible for the provider of the online intermediation service to act immediately to protect consumers. However, in these exceptional cases where services could be suspended, restricted or terminated immediately, the business user should in any case be provided with a statement of reasons for the suspension, restriction or termination. 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. 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) 2018/334\textsuperscript{22} 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 information regarding the content of the notification to the business user in cases where a decision to suspend, restrict or terminate the provision of its services follows from a notification from a third party, in order to allow the business user to easily refute manifestly 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, except in cases where a provider of online intermediation services is under a legal obligation not to disclose them or where a provider of online intermediation services can demonstrate that the business user concerned has repeatedly infringed the applicable terms and conditions, resulting in their suspension, restriction or termination.

\textsuperscript{22} Commission Recommendation (EU) 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 information regarding the content of the notification to the business user in cases where a decision to suspend, restrict or terminate the provision of its services follows from a notification from a third party, in order to allow the business user to easily refute manifestly 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, except in cases where a provider of online intermediation services is under a legal obligation not to disclose them or where a provider of online intermediation services can demonstrate that the business user concerned has repeatedly infringed the applicable terms and conditions, resulting in their suspension, restriction or termination.
Amendment 24

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

Amendment

(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 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. In cases where disclosure of all parameters in the terms and conditions is not technologically possible or would have the effect of disclosing weighting of all individual parameters, only the main parameters and the reasons for their relative importance should be presented. 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. When displaying the results, the online intermediation service should also disclose close to each ranking
whether it has been influenced by differentiated treatment or by any direct or indirect remuneration, contractual or direct ownership relation. 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 their relevance to the consumers of the specific online intermediation services. According to the Commission Proposal for a Directive of the European Parliament and of the Council as regards better enforcement and modernisation of EU consumer protection rules, providers of online intermediation services should be required to provide consumers with information about the parameters affecting the ranking. While the information offered to the consumer should be presented in a clear and comprehensible manner that is suitable to the needs of the consumer, the information offered to the business user and the consumer should, in any event, be similar enough to ensure that both parties who offer and those who search for a good or service are able to take informed decisions based on transparent searches.

Amendment 25

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

**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 the providers are under no circumstances required to disclose any trade secrets as defined in Directive (EU) 2016/943 of the European Parliament and of the Council 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.

The existence of an up-to-date description of the main parameters would also benefit users other than corporate website users of the online search engine. In some cases, providers of online search engines may decide to influence the ranking in a
specific case or delist a website from a ranking based on notifications by third parties. Unlike providers of online intermediation services, providers of online search engines cannot due to the lack of any contractual relationship between the parties be expected to notify a corporate website user directly of a delisting or change in ranking due to a notification. Nevertheless, a corporate business user should be able to inspect the notification that has led to the change in ranking or to delisting in the specific case, by investigating the contents of the notice in a publicly accessible online database. This would help to mitigate potential abuses of delisting notifications by competitors.


Amendment 26

Proposal for a regulation
Recital 18 a (new)

Text proposed by the Commission

(18 a) In order for the business users to benefit from the information regarding ranking parameters, the results of ranking should reflect the genuine and non-arbitrary application of those parameters and the relative importance of the parameters that the providers of online intermediation services and online search engines disclose. For example, if several business users were in a comparable situation as regards the parameters which the provider has
disclosed as those determining ranking, they should be able to anticipate the ranking to reflect their similar situation vis-à-vis these parameters.

Amendment 27

Proposal for a regulation
Recital 18 b (new)

_text proposed by the Commission_

(18 b) Providers of online search engines often allow the ranking of search results to be influenced against forms of remuneration paid by corporate website users. Clear details regarding such practice should be made publicly available for corporate website users and consumers to understand the effects of remuneration on ranking. Nevertheless, search results whose placement in the ranking has been influenced by forms of payment should be clearly flagged, making them easily distinguishable from other search results where remuneration was not paid.

Amendment 28

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, 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.

not controlled by the provider, which may give the provider an economic incentive and the ability to use its control over the online intermediation service or online search engine to provide technical or economic advantages to its own offering, or those offered through a business user which it controls, which it could deny to competing business users. Such behaviour could undermine fair competition and restrict consumer choice. 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, such as default settings, in relation to goods or services it offers itself compared to those offered by business users. An online intermediation service or online search engine 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 29

Proposal for a regulation
Recital 19 a (new)

Text proposed by the Commission

Amendment

(19 a) Nevertheless, any such differentiated treatment on online intermediation services should only be allowed if the provider of online intermediation services is able to objectively justify it in accordance with general principles of Union law such as proportionality, legal certainty and general principles that are inferred from the Charter of Fundamental Rights. Moreover, the differentiated treatment needs to be non-discriminatory towards
all other business users that offer goods or services through the online intermediation services, and the differentiated treatment does not prevent consumers from still choosing and using the goods and services of their preference, among those competing goods and services that are offered through the online intermediation service.

Amendment 30
Proposal for a regulation
Recital 19 b (new)

Text proposed by the Commission

(19 b) Certain practices can be conclusively treated as unfair in all circumstances. These practices are listed in Annex I to this proposal. The EU Platform Observatory should continuously monitor the application and effects on the market of this list of practices and recommend updates to the Commission.

Amendment 31
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.\textsuperscript{24} 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, with the exception of certain data related to business users’ ratings and reviews, which the business users should be allowed to receive in an aggregate and anonymised form. In all cases, processing of personal data should comply with the \textit{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\textsuperscript{24}, Directive (EU) 2016/680 of the European Parliament and of the Council\textsuperscript{24} and Directive 2002/58/EC of the European Parliament and of the Council.


Amendment 32

Proposal for a regulation
Recital 20 a (new)
(20 a) In accordance with Regulation 2016/679, a consumer has the right to receive the personal data concerning him or her, which he or she has provided to a controller such as a provider of online intermediation services, in a structured, commonly used and machine-readable format and have the right to transmit those data to another controller, such as a business user of a provider of online intermediation services.

Amendment 33

Proposal for a regulation
Recital 20 b (new)

(20 b) Business users should be able to receive anonymised information regarding their online reputation, meaning ratings and reviews accumulated with one provider of online intermediation services, with the view to enabling business users to get a clearer understanding of their brand value and to enable them to improve their performance on the online platform. Tools should be provided for developing business users’ understanding of their reputation and would be the first step to enable greater competition between business users, giving access to a wider and more informed choice to consumers.

Amendment 34

Proposal for a regulation
Recital 20 c (new)
(20 c) Several competition authorities both within and outside the Union have opened up investigations or declared their intention to do so concerning cases where providers of online intermediation services have used their dual position as both a marketplace and a business offering goods or services on the same marketplace to obtain or misuse a dominant position. The online intermediation service provider’s access to data generated by the transactions of a business user may allow the online intermediation service provider to compete with the business user on the basis of the data. To ensure fairness, the provider of the online intermediation service should not be allowed to disclose the data generated by the transactions of a business user to third parties for commercial purposes, including within their own corporate structure, without the consent of the business user, except in cases where a provider of online intermediation services would be subject to a legal obligation to disclose data generated by the transactions of a business user.

Amendment 35

Proposal for a regulation
Recital 21

(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

(21) Providers of online intermediation services should not restrict the ability of business users to offer the same goods and services to consumers under different or the same conditions through other intermediation services. In certain cases, providers of online intermediation services might restrict the ability of business users to offer goods or services to consumers
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 36

Proposal for a regulation
Recital 22

*Text proposed by the Commission*

(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

*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 **transparent, based on principles of equal treatment, non-discriminatory and** 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 a reasonable period of time. The online intermediation service providers may maintain the decision they have taken in force during the duration of the complaint. Any attempt to reach an agreement through the internal complaint handling-mechanism does not affect the rights of providers of online intermediation services or business users to initiate**
judicial proceedings at any time during or after the complaint handling process. In addition, providers of online intermediation services should regularly publish information on the functioning and effectiveness of their internal complaint-handling system to help business users to understand the main 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.

Amendment 37
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 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.

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 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.
Amendment 38

Proposal for a regulation
Recital 23 a (new)

*Text proposed by the Commission*

(23 a) The use of the word ‘internal’ should not be understood as preventing the delegation of an internal complaint-handling system to an external service provider or other corporate structure, as long as the operator has full authority and the ability to ensure compliance of the internal complaint-handling system with the requirements in this Regulation.

Amendment 39

Proposal for a regulation
Recital 24

*Text proposed by the Commission*

(24) Mediation can offer providers of online intermediation services and their business users a means to resolve disputes in a satisfactory manner, without having to use judicial proceedings which can be lengthy and costly. Therefore, providers of online intermediation services should facilitate mediation by, in particular, identifying mediators with which they are willing to engage. Mediators which provide their services from a location outside the Union should only be identified where it is guaranteed that the use of those services does not in any way deprive the business users concerned of any legal
protection offered to them under Union law or the law of the Member States, including the requirements of this Regulation and the applicable law regarding protection of personal data and trade secrets. In order to be accessible, fair, and as swift, efficient and effective as possible, those mediators should meet certain set criteria.

Mediators should be encouraged to resolve disputes as soon as reasonably practicable.

Amendment 40
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.

(provide online intermediation services, that proportion should never be less than half of those costs, except for where the mediator determines that the business user who has brought the case has not acted in good faith.)

Amendment 41
Proposal for a regulation
Recital 25 a (new)

_text proposed by the Commission_

(25 a) Since the providers of online intermediation services should always be
required to identify mediators with which they are willing to engage, and should be obliged to engage in mediation in good faith, the obligation of mediation should be established in a way that prevents abuse of the mediation system by business users. As such, business users should also be obliged to engage in mediation in good faith. Furthermore, where a business user has brought forward several repeated cases not leading to a resolution of the dispute, or where a business user brings forward a case on a subject on which they have previously acted in bad faith in the mediation process, the provider of the online intermediation service should not, in these exceptional cases, be obliged to engage in mediation with said business user. This exceptional situation should not limit the business user's possibility to bring forward a case for mediation where, as determined by the mediator, the subject matter of the mediation is not related to the previous cases.

Amendment 42

Proposal for a regulation
Recital 26

Text proposed by the Commission

(26) In order to facilitate the settlement of disputes relating to the provision of online intermediation services using mediation in the Union, the Commission should encourage the setting up of specialised mediation organisations, which are currently lacking. The involvement of mediators having specialist knowledge of online intermediation services and online search engines as well as of the specific industry sectors within which those services are provided should add to the confidence both parties have in the mediation process and should increase the likelihood of that process leading to a

Amendment

(26) In order to facilitate the settlement of disputes relating to the provision of online intermediation services using mediation in the Union, the Commission should, together with the Member States, encourage the setting up of specialised mediation organisations, which are currently lacking. The involvement of mediators having specialist knowledge of online intermediation services and online search engines as well as of the specific industry sectors within which those services are provided should add to the confidence both parties have in the mediation process and should increase the likelihood of that process leading to a
swift, just and satisfactory outcome.

Amendment 43
Proposal for a regulation
Recital 27

Text proposed by the Commission

(27) Various factors, such as limited financial means, a fear of retaliation and exclusive choice of law and forum provisions in terms and conditions, can limit the effectiveness of existing judicial redress possibilities, particularly those which require business users or corporate website users to act individually and identifiably. To ensure the effective application of this Regulation, organisations, associations representing business users or corporate website users, as well as certain public bodies set-up in Member States, should be granted the possibility to take action before national courts. Such action before national courts should aim to stop or prohibit infringements of the rules set out in this Regulation and to prevent future damage that could undermine sustainable business relationships in the online platform economy. In order to ensure that such organisations or associations exercise that right effectively and in an appropriate manner, they should meet certain criteria. Considering the particular status of the relevant public bodies in Member States where such bodies have been set up, it should only be required that those have been specifically charged, in accordance with the relevant rules of national law, with bringing such actions either in the collective interest of the parties concerned or in the general interest, without there being a need to apply those criteria to such public bodies. Any such actions should in no way affect the rights of the business

Amendment

(27) Various factors, such as limited financial means, a fear of retaliation and exclusive choice of law and forum provisions in terms and conditions, can limit the effectiveness of existing judicial redress possibilities, particularly those which require business users or corporate website users to act individually and identifiably. To ensure the effective application of this Regulation, organisations, associations representing business users or corporate website users, as well as certain public bodies set-up in Member States, should be granted the possibility to take action before national courts. Such action before national courts should aim to stop or prohibit infringements of the rules set out in this Regulation and to prevent future damage that could undermine sustainable business relationships in the online platform economy, including those pertaining to SMEs and microenterprises. In order to ensure that such organisations or associations exercise that right effectively and in an appropriate manner, they should meet certain criteria, in particular relating to transparency of funding. Member States should be required to set up or nominate such public bodies. For the relevant public bodies it should only be required that those have been specifically charged, in accordance with the relevant rules of national law, with bringing such actions either in the collective interest of the parties concerned or in the general interest, without there being a need to
users and corporate website users to take judicial action on an individual basis. Any such actions should in no way affect the rights of the business users and corporate website users to take judicial action on an individual basis.

Amendment 44

Proposal for a regulation
Recital 27 a (new)

Text proposed by the Commission

(27 a) Breaches of the provisions of this Regulation will in certain instances require a rapid and flexible enforcement. Enforcement bodies set up or nominated by Member States should be responsible for the enforcement of this Regulation in an adequate and effective manner. The enforcement bodies should be established in addition to the procedure for judicial proceedings by representative organisations, associations or public bodies set out in this Regulation. The decisions made by enforcement bodies could be challenged in judicial proceedings according to relevant national legislation.

Amendment 45

Proposal for a regulation
Recital 27 b (new)

Text proposed by the Commission

(27 b) A close monitoring of the application of this regulation is necessary. Member States should designate national authorities to require the relevant information, which is necessary for the monitoring and enforcement of this Regulation, from providers of online intermediation services and online search engines. The information gathered by
those authorities should be provided to the Commission and to the EU Platform Observatory upon request.

Amendment 46

Proposal for a regulation
Recital 28 a (new)

Text proposed by the Commission

(28 a) For reasons of transparency and accountability, and due to the role and tasks foreseen, the EU Platform Observatory should be granted a role within this Regulation in addition to its establishment as an expert group established by a Commission Decision (2018)2393. The Observatory should fulfil the tasks granted to it within this Regulation independently and in the public interest and its members should consist of a wide range of independent experts that have proven competence and experience of the online platform economy to ensure this.

Amendment 47

Proposal for a regulation
Recital 29

Text proposed by the Commission

(29) The Commission should periodically evaluate this Regulation, in particular with a view to determining the need for amendments in light of relevant technological or commercial developments.

Amendment

(29) The Commission should periodically evaluate this Regulation and closely monitor its effects on the online platform economy, in particular with a view to determining the need for amendments in light of relevant technological or commercial developments, and following the evaluation, take appropriate measures. As
the sector will be developing rapidly over the coming years, it might be appropriate for this Regulation to be followed up by further and more prescriptive legislation where and if the transparency and fairness provisions established in this Regulation would prove to be insufficient to handle future imbalances and unfair trading practices.

Amendment 48
Proposal for a regulation
Recital 31

Text proposed by the Commission

(31) As the objective of this Regulation, namely to ensure a fair, predictable, sustainable and trusted online business environment within the internal market, cannot be sufficiently achieved by the Member States, but can rather, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.

Amendment

(31) As the objective of this Regulation, namely to ensure a clear, fair, predictable, sustainable and trusted online business environment within the internal market, cannot be sufficiently achieved by the Member States, but can rather, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary to achieve that objective.

Amendment 49
Proposal for a regulation
Recital 32

Text proposed by the Commission

(32) It is appropriate to clarify that this Regulation should not affect the application of the relevant rules of Union law applicable in the areas of judicial cooperation in civil matters, competition,

Amendment

(32) It is appropriate to clarify that this Regulation should not affect the application of the relevant rules of Union law applicable in areas such as judicial cooperation in civil matters, competition,
consumer protection, electronic commerce
and financial services.

consumer protection, electronic commerce
and financial services and is without
prejudice to national rules which, in
conformity with Union law, regulate
unfair commercial practices.

Amendment 50

Proposal for a regulation
Article 1 – paragraph 1

Text proposed by the Commission

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

Amendment

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

Amendment 51

Proposal for a regulation
Article 1 – paragraph 2

Text proposed by the Commission

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
ingines, 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

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
ingines, offer goods or services to
consumers located in the Union,
irrespective of the place of establishment
or residence of the providers of those
services and irrespective of the law
otherwise applicable.
Amendment 52

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

Text proposed by the Commission

Amendment

2 a. The obligations set out on the providers of online intermediation services in this Regulation shall apply to providers of ancillary operating systems when an operating system in itself acts as an online intermediation service within the meaning of Article 2(2).

Amendment 53

Proposal for a regulation
Article 1 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

2 b. This Regulation shall not apply to online payment services or to online advertising serving tools or online advertising exchanges which are not provided with the aim of the facilitating the initiation of direct transactions and which do not involve a contractual relationship with consumers.

Amendment 54

Proposal for a regulation
Article 1 – paragraph 2 c (new)

Text proposed by the Commission

Amendment

2 c. This Regulation shall be without prejudice to Union law, and national rules which, in conformity with Union law, regulate unfair commercial practices.
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 goods or services to consumers for purposes relating to its trade, business, craft or profession, including private individuals personally acting as traders via online intermediation services;

Amendment 56

Proposal for a regulation
Article 2 – paragraph 1 – point 2 – point b

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;

Amendment

(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, unless the service of facilitating the initiating of direct transactions between those business users and consumers is of marginal character only;

Amendment 57

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

Text proposed by the Commission

(3 a) ‘ancillary operating systems’ means software, which meets all of the following requirements:

a) the ancillary operating system ensures the essential basic operating of a mobile device or a connected speaker;

Amendment

(3 a) ‘ancillary operating systems’ means software, which meets all of the following requirements:
b) it is closely linked to an online intermediation service which controls the main channel through which applications can be installed on the operating system;

c) the development and updating of the operating system is provided or controlled by the provider of the linked online intermediation service, either directly or indirectly;

Amendment 58

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

Text proposed by the Commission

Amendment

(3 b) ‘provider of ancillary operating systems’ means any natural or legal person which provides, or which offers to provide, ancillary operating systems;

Amendment 59

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 that allows users to input queries and 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, vocal request, phrase or other input, and returns output in which information related to the requested content can be found;

Amendment 60

Proposal for a regulation
Article 2 – paragraph 1 – point 7
(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;

(7) 'corporate website user' means any natural or legal person which uses an online interface, meaning any software and including websites and mobile applications, to offer goods or services to consumers for purposes relating to its trade, business, craft or profession;

Amendment 61

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 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 62

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

Amendment

(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
the provider of online intermediation services.

Amendment 63
Proposal for a regulation
Article 2 – paragraph 1 – point 10 a (new)

Text proposed by the Commission

Amendment

(10 a) ‘ancillary goods and services’ means goods and services offered to the consumer prior to the completion of a transaction initiated on the online intermediation service in addition to and as complementary to the primary good or service offered by the business user through the online intermediation service.

Amendment 64
Proposal for a regulation
Article 2 – paragraph 1 – point 10 b (new)

Text proposed by the Commission

Amendment

(10 b) ‘mediation’ means any structured process as defined in Article 3(a) of Directive (EU) 2008/52 of the European Parliament and the Council;

Amendment 65
Proposal for a regulation
Article 2 – paragraph 1 – point 10 c (new)

Text proposed by the Commission

Amendment

(10 c) "EU Platform Observatory" means the EU Observatory on the Online Platform Economy established in accordance with Commission Decision C(2018)2393.
Amendment 66
Proposal for a regulation
Article 2 a (new)

Text proposed by the Commission

Article 2 a

Anti-circumvention obligations
Providers of online intermediation services shall not use any software or services, including ancillary operating systems, which they provide themselves or they control, to circumvent the obligations laid down on the providers of online intermediation services within this Regulation.

Amendment 67
Proposal for a regulation
Article 3 – paragraph 1 – point -a (new)

Text proposed by the Commission

(a) include only fair and proportionate clauses;

Amendment 68
Proposal for a regulation
Article 3 – paragraph 1 – point a

Text proposed by the Commission

(a) are drafted in clear and unambiguous language

Amendment 69
Proposal for a regulation
Article 3 – paragraph 1 – point c

(a) are drafted in clear and intelligible language;
Text proposed by the Commission

(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

(c) set out the **non-discriminatory** grounds for decisions to suspend or terminate or impose any other kind of restriction upon, in whole or in part, the provision of their online intermediation services to business users;

Amendment 70

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

Text proposed by the Commission

(c a) include information on any additional distribution channels and potential affiliate programmes through which the provider of online intermediation services might distribute goods and services offered by the business user;

Amendment

Amendment 71

Proposal for a regulation
Article 3 – paragraph 1 – point c b (new)

Text proposed by the Commission

(c b) include general information regarding the effects of the terms and conditions on the ownership and control of intellectual property rights.

Amendment

Amendment 72

Proposal for a regulation
Article 3 – paragraph 2
Text proposed by the Commission

2. Terms and conditions, or specific provisions thereof, which do not comply with the requirements of paragraph 1 shall **not be binding on the business user concerned** where such non-compliance is established by a competent court.

Amendment

2. Terms and conditions, or specific provisions thereof, which do not comply with the requirements of paragraph 1 shall **be null and void** where such non-compliance is established by a competent court.

Amendment 73

Proposal for a regulation
Article 3 – paragraph 3 – subparagraph 1

Text proposed by the Commission

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

Amendment

Providers of online intermediation services shall notify **on a durable medium** to the business users concerned any modification of their terms and conditions.

Amendment 74

Proposal for a regulation
Article 3 – paragraph 3 – subparagraph 2

Text proposed by the Commission

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.

Amendment

The modifications shall not be implemented before the expiry of a notice period which is reasonable and proportionate to the nature and extent of the 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 modifications. **Where the modifications require the business user to make significant technical adjustments to its goods or services, this period shall be at least 30 days. The business user shall be allowed to terminate their agreement within 15 days from the receipt of the**
notice, where such modifications are detrimental to the business user.

Amendment 75
Proposal for a regulation
Article 3 – paragraph 3 – subparagraph 3 a (new)

Text proposed by the Commission

Amendment

During the 15 days’ notice period, submitting new or updating goods or services on the online intermediation service shall be considered clear affirmative action to waive the notice period.

In cases where the notice period is 30 days because the modifications to the terms and conditions require the business user to make significant technical adjustments to its goods or services, the notice period shall not be considered automatically waived where the business user submits new or updates goods and services.

Amendment 76
Proposal for a regulation
Article 3 – paragraph 5

Text proposed by the Commission

Amendment

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.

5. The notice periods set out in 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 periods referred to in the second subparagraph of
paragraph 3;

(b) addressing unforeseen and imminent danger which could harm or pose security problems for online intermediation services, their consumers or other users, including in connection with fraud, malware, spam, data breaches or other cybersecurity risks.

Amendment 77

Proposal for a regulation
Article 3 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5 a. The providers of online intermediation services shall ensure that the brand attributed to business users and their goods and services is recognizable throughout the entire intermediation process.

Amendment 78

Proposal for a regulation
Article 4 – title

Text proposed by the Commission

Amendment

Suspension and termination

Suspension, restrictions and termination

Amendment 79

Proposal for a regulation
Article 4 – paragraph 1

Text proposed by the Commission

Amendment

1. Where a provider of online intermediation services decides to suspend or terminate, in whole or in part, the

1. Where a provider of online intermediation services decides to suspend, restrict or terminate, in whole or in part,
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.

**Amendment 80**

**Proposal for a regulation**  
**Article 4 – paragraph 1 a (new)**

*Text proposed by the Commission*

1 a.  
Paragraph 1 shall not apply where:

(a) a provider of online intermediation services is subject to a legal obligation to suspend, restrict or terminate, in whole or in part, the provision of its online intermediation services to a given business user;

(b) a provider of online intermediation services acts to protect consumers on the basis of a reasonable doubt regarding illicit content, the safety of a product or service, counterfeiting, fraud, or suitability of the product or service to minors;

(c) a provider of online intermediation services can demonstrate that the business user concerned has repeatedly infringed the applicable terms and conditions, resulting in their suspension, restriction or termination.

*In such cases, the business user shall immediately be provided with a statement of reasons.*

**Amendment 81**

**Proposal for a regulation**  
**Article 4 – paragraph 2**
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).

2. The statement of reasons referred to in paragraph 1 or 1ashall 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 non-discriminatory ground or grounds for that decision referred to in Article 3(1)(c). Where the suspension, restriction or termination results from a third party notification, the contents of said notification shall be included in the statement of reasons.

Amendment 82
Proposal for a regulation
Article 4 – paragraph 2 a (new)

Text proposed by the Commission

2 a. Paragraph 2 shall not apply where a provider of online intermediation services is subject to a legal obligation not to provide the specific facts or circumstances or the reference to the applicable ground or grounds, or where a provider of online intermediation services can demonstrate that the business user concerned has repeatedly infringed the applicable terms and conditions, resulting in their suspension, restriction or termination.

Amendment 83
Proposal for a regulation
Article 4 – paragraph 2 b (new)

Text proposed by the Commission

2 b. Termination, restriction and suspension shall be, where possible and
proportionate, preceded by a notification and opportunity to clarify or re-establish compliance. Where a suspension, restriction or termination are based on a correctable infringement of terms and conditions and not committed in bad faith, provider of online intermediation services shall seek to reinstate the business user as soon as the non-compliance is corrected. Where a suspension or termination is found to be in error, the business user shall be reinstalled without delay and under the same conditions as before the suspension, restriction or termination.

Amendment 84
Proposal for a regulation
Article 5 – paragraph 1 – subparagraph 1

Text proposed by the Commission

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.

Amendment

Without prejudice to paragraph 4, providers of online intermediation services shall set out in their terms and conditions the parameters determining ranking and the reasons for the relative importance of those parameters. Where disclosure of all parameters in the terms and conditions is not technologically possible or would have the effect of disclosing weighting of all individual parameters, only the main parameters and the reasons for their relative importance shall be presented.

Amendment 85
Proposal for a regulation
Article 5 – paragraph 1 – subparagraph 1 a (new)
Providers of online intermediation services shall ensure that ranking reflects the non-arbitrary application of the disclosed ranking parameters and their relative importance.

Amendment 86

Proposal for a regulation
Article 5 – paragraph 1 – subparagraph 2

Text proposed by the Commission
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.

Amendment
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.

Amendment 87

Proposal for a regulation
Article 5 – paragraph 1 – subparagraph 2 a (new)

Text proposed by the Commission
When displaying the results, the provider of online intermediation service shall disclose close to each ranking whether and to what extent it has been influenced by differentiated treatment, or by any direct or indirect remuneration, contractual or direct ownership relations.

Amendment
When displaying the results, the provider of online intermediation service shall disclose close to each ranking whether and to what extent it has been influenced by differentiated treatment, or by any direct or indirect remuneration, contractual or direct ownership relations.
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.

Amendment

2. Without prejudice to paragraph 4, providers of online search engines shall set out the parameters determining ranking and the reasons for the relative importance of those parameters, by providing an easily and publicly available description, drafted in clear and intelligible language on the online search engines of those providers. They shall keep that description up to date. Where disclosure of all parameters in the terms and conditions is not technologically possible or would have the effect of disclosing weighting of all individual parameters, only the main parameters and the reasons for their relative importance shall be presented.

Providers of online search engines shall ensure that ranking reflects the non-arbitrary application of the disclosed ranking parameters and their relative importance.

Where the main parameters include the possibility to influence ranking against any direct or indirect remuneration paid by business users or corporate website users to the respective provider, that provider shall also set out a description of those possibilities and of the effects of such remuneration on ranking.

When displaying the results, the provider of online search engine shall disclose close to each ranking whether and to what extent it has been influenced by differentiated treatment, including differentiated positioning and display, or against direct or indirect remuneration, contractual or direct ownership relations.
2 a. 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 corporate website user to inspect the contents of the notice in a publicly accessible online database.

Amendment 90

Proposal for a regulation
Article 5 – paragraph 4

Text proposed by the Commission

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.

Amendment

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 information that with reasonable certainty would result in the enabling of deception of consumers through the manipulation of search results. This Article shall be without prejudice to Directive (EU) 2016/943.

Amendment 91

Proposal for a regulation
Article 5 – paragraph 4 a (new)

Text proposed by the Commission

4 a. To facilitate the compliance of providers of online intermediation services and providers of online search engines with and the enforcement of the requirements of this Article, the Commission shall accompany the transparency requirements set out in this Article by guidelines.
Amendment 92

Proposal for a regulation
Article 5 a (new)

_text proposed by the Commission_

Amendment

Article 5 a

Ancillary goods and services

1. Where ancillary goods and services, including financial products, are offered to consumers through the online intermediation service, either by the provider of the online intermediation service or by third parties, the providers of the online intermediation service shall set out in their terms and conditions a description of the type of ancillary goods and services offered and a description of whether and under which conditions the business user is also allowed to offer their own ancillary goods and services through the online intermediation service.

2. The provider of the online intermediation service shall at the request of a business user provide a list of ancillary goods or services offered as complementary and in addition to the goods or services being offered by the business user. At the time of offering the ancillary goods and services, the providers of online intermediation services shall disclose clearly and visibly who provides the ancillary goods and services.

Amendment 93

Proposal for a regulation
Article 6 – paragraph 1 a (new)
Text proposed by the Commission

1 a. Providers of online search engines shall set out 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 engines by either that provider itself or any corporate website users which that provider controls and, on the other hand, other corporate website users.

Amendment 94

Proposal for a regulation
Article 6 – paragraph 2 – introductory part

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:

Amendment 95

Proposal for a regulation
Article 6 – paragraph 2 – point a

(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;

Amendment

(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, corporate website users or consumers provide for the use of the online intermediation services or the online search engines concerned or which are generated through the provision of those services.
Amendment 96

Proposal for a regulation
Article 6 – paragraph 2 – point b

Text proposed by the Commission

(b) ranking;

Amendment

(b) ranking and pre-configured settings related to goods or services offered to consumers through those online intermediation services by either that provider itself or by any business users which that provider controls, on the one hand, and, other business users, on the other hand;

Amendment 97

Proposal for a regulation
Article 6 – paragraph 2 – point c

Text proposed by the Commission

(c) any direct or indirect remuneration charged for the use of the online intermediation services concerned;

Amendment

(c) any direct or indirect remuneration charged for the use of the online intermediation services or online search engines concerned or any ancillary services, and any technical or economic benefit that it does not extend to all business users or corporate website users;

Amendment 98

Proposal for a regulation
Article 6 – paragraph 2 – point d

Text proposed by the Commission

(d) access to, or conditions for use of, services that are directly connected or ancillary to the online intermediation services concerned.

Amendment

(d) access to, or conditions for use of, services or functionalities that are directly connected or ancillary to the online intermediation services or online search engines.
Amendment 99

Proposal for a regulation
Article 6 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2 a. Providers of online intermediation services shall treat goods or services offered to consumers through those online intermediation services by that provider itself or any business users which that provider controls, on the one hand, and, competing goods or services offered through the online intermediation service by other business users on the other hand, equally, without discrimination, unless such differentiated treatment is applied in an non-discriminatory manner between all other business users and can be objectively justified in accordance with the general principles of Union law. Any differentiated treatment shall not prevent consumers’ possibility to access and use goods and services of their preference among those that are offered through the online intermediation service.

Amendment 100

Proposal for a regulation
Article 6 a (new)

Text proposed by the Commission

Amendment

Article 6 a

Unfair trading practices

Providers of online intermediation services shall not engage in unfair commercial practices as listed in Annex I.
This list is without prejudice to other Union law or national law that Member States apply in conformity with Union law and to obligations of providers of online intermediation services stemming from such law.

Amendment 101

Proposal for a regulation
Article 7 – paragraph 1 a (new)

*Text proposed by the Commission*

1 a. Providers of online search engines shall set out a description, available on the online search engines of those providers, of the technical access, or absence thereof, of business users to any personal data or other data, or both, which corporate website users or consumers provide for the use of the online search engines concerned or which are generated through the provision of those services

Amendment 102

Proposal for a regulation
Article 7 – paragraph 2 – introductory part

*Text proposed by the Commission*

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

*Amendment*

2. The description referred to in paragraph 1 or 1a set out by providers of online intermediation services or providers of online search engines shall be adequate enough to inform business users or corporate website users at least of the following:

Amendment 103

Proposal for a regulation
Article 7 – paragraph 2 – point a
Text proposed by the Commission

(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

(a) whether the provider of online intermediation services or provider of online search engine has access to personal data or other data, or both, which business users or 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 conditions;

Amendment 104

Proposal for a regulation
Article 7 – paragraph 2 – point b

Text proposed by the Commission

(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;

Amendment

(b) whether a business user or a corporate website user has access to personal data or other data, or both, provided by that business user or corporate website 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 or corporate website user and the consumers of his or her goods or services, and if so, to which categories of such data and under what conditions;

Amendment 105

Proposal for a regulation
Article 7 – paragraph 2 – point c

Text proposed by the Commission

(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

Amendment

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

provision of the online intermediation services or online search engines to all of the business users, corporate website users and consumers thereof, and if so, to which categories of such data and under what conditions.

Amendment 106

Proposal for a regulation
Article 7 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2 a. Business users shall have the right to receive anonymised ratings and reviews or any other anonymised and aggregated data related to their ratings and reviews on the online intermediation service, regardless of whether they have provided such data to the provider of online intermediation services themselves, in a structured, commonly used and machine-readable format.

Amendment 107

Proposal for a regulation
Article 7 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

2 b. The provider of the online intermediation service shall not for commercial purposes disclose to third parties, including within their corporate structure, data generated by the transactions of a business user without the explicit consent of the business user. This paragraph shall not apply where a provider of online intermediation services is subject to a legal obligation to disclose data generated by the transactions of a business user.
Amendment 108
Proposal for a regulation
Article 7 – paragraph 2 c (new)

Text proposed by the Commission

Amendment

2 c. This Regulation shall be without prejudice to the application of Regulation (EU) 2016/679.

Amendment 109
Proposal for a regulation
Article 8 – paragraph 1

Text proposed by the Commission

Amendment

1. 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.

Amendment 110
Proposal for a regulation
Article 8 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1 a. For any other restrictions to offer different conditions through other means than those prohibited in paragraph 1, providers of online intermediation services which 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 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. These restrictions shall be proportionate and shall be justified by a legitimate interest of the provider.

Amendment 111

Proposal for a regulation
Article 8 – paragraph 2

Text proposed by the Commission

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.

Amendment

2. The Member States may prohibit or limit the restrictions referred to in paragraph 1a or other restrictions except for those referred to in paragraph 1 in their national rules adopted in accordance with the Union law.

Amendment 112

Proposal for a regulation
Article 9 – paragraph 1 – subparagraph 2 – introductory part

Text proposed by the Commission

That internal complaint-handling system shall be easily accessible for business users. It shall allow them to lodge complaints directly with the provider concerned regarding any of the following issues:

Amendment

That internal complaint-handling system shall be easily accessible and free of charge for business users and ensure handling within a reasonable time frame. It shall be based on the principles of transparency and equal treatment. It shall allow them to lodge complaints directly with the provider concerned regarding any of the following issues:
Amendment 113

Proposal for a regulation
Article 9 – paragraph 1 – subparagraph 2 – point a

Text proposed by the Commission

(a) alleged non-compliance by that provider with any legal obligations laid down in this Regulation which negatively affects the complainant;

Amendment

(a) alleged non-compliance by that provider with any legal obligations laid down in this Regulation which affects the complainant;

Amendment 114

Proposal for a regulation
Article 9 – paragraph 1 – subparagraph 2 – point b

Text proposed by the Commission

(b) technological issues which relate directly to the provision of online intermediation services, and which negatively affect the complainant in a non-negligible manner;

Amendment

(b) technological issues which relate directly to the provision of online intermediation services, and which affect the complainant in a non-negligible manner;

Amendment 115

Proposal for a regulation
Article 9 – paragraph 1 – subparagraph 2 – point c

Text proposed by the Commission

(c) measures taken by, or behaviour of, that provider which relate directly to the provision of the online intermediation services, and which negatively affect the complainant in a non-negligible manner.

Amendment

(c) measures taken by, or behaviour of, that provider which relate directly to the provision of the online intermediation services, and which affect the complainant in a non-negligible manner.

Amendment 116

Proposal for a regulation
Article 9 – paragraph 2 – point b
(b) process complaints swiftly and effectively, taking into account the importance and complexity of the issue raised; providing in any case a first response within 15 days;

Amendment 117

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 the outcome of the internal complaint-handling process, in an individualised manner and drafted in clear and intelligible language.

Amendment 118

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 establish and make easily available to the public information on the functioning and effectiveness of their internal complaint-handling system. They shall keep that information up to date.

Amendment 119

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-

Amendment

That information shall include the total number of complaints lodged, the main
matter of the complaints, the time period needed to process the complaints and the decision taken on the complaints.

types of complaints, the average time period needed to process the complaints and aggregated information regarding the outcome of complaints.

Amendment 120

Proposal for a regulation
Article 10 – paragraph 3

Text proposed by the Commission

3. Providers of online intermediation 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.

Amendment

3. Providers of online intermediation services and business users 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.

Amendment 121

Proposal for a regulation
Article 10 – paragraph 4

Text proposed by the Commission

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.

Amendment

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, except in cases where the mediator determines that the business
user has not acted in good faith or is seeking to abuse the mediation process.

Amendment 122
Proposal for a regulation
Article 10 – paragraph 4 a (new)

Text proposed by the Commission

4 a. Providers of online intermediation services shall not be obliged to engage in mediation where a business user brings proceedings on a subject in relation to which that business user has previously brought proceedings seeking mediation and it has been determined by the mediator in that case that the business user has not acted in good faith. Providers of online intermediation services shall also not be obliged to engage in mediation with business users who have brought forward to the mediator repeated unsuccessful mediation attempts.

Amendment 123
Proposal for a regulation
Article 10 – paragraph 5

Text proposed by the Commission

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.

Amendment 124
Proposal for a regulation
Article 10 – paragraph 5 a (new)

Text proposed by the Commission

5 a. Providers of online intermediation services shall establish and make easily available to the public information on the functioning and effectiveness of mediation related to their activities. They shall keep that information up to date.

That information shall include the total number of mediation cases, the main types of the mediation cases, the average time period needed to process the mediation cases and aggregated information regarding the outcome of mediation cases.

Amendment 125

Proposal for a regulation
Article 11 – paragraph 1

Text proposed by the Commission

The Commission shall encourage providers of online intermediation services as well as organisations and associations representing them to individually or jointly set up one or more organisations providing mediation services which meet the requirements specified in Article 10(2), for the specific purpose of facilitating the out-of-court settlement of disputes with business users arising in relation to the provision of those services, taking particular account of the cross-border nature of online intermediation services.

Amendment

The Commission and the Member States shall encourage providers of online intermediation services as well as organisations and associations representing them to individually or jointly set up one or more organisations providing mediation services which meet the requirements specified in Article 10(2), for the specific purpose of facilitating the out-of-court settlement of disputes with business users arising in relation to the provision of those services, taking particular account of the cross-border nature of online intermediation services.

Amendment 126

Proposal for a regulation
Article 12 – paragraph 1 a (new)
Text proposed by the Commission

1. Member States shall ensure that their relevant public bodies set up a registry of unlawful acts which have been subject to injunction orders before national courts in order to provide a basis for best practice and information to other Member State public bodies or authorities.

Amendment 127

Proposal for a regulation
Article 12 – paragraph 2 – subparagraph 1 – introductory part

Text proposed by the Commission

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:

Amendment

Organisations or associations shall have the right referred to in paragraph 1 only where, at the time of bringing the action and for the duration of the action, they continue to meet all of the following requirements:

Amendment 128

Proposal for a regulation
Article 12 – paragraph 2 – subparagraph 1 – point b

Text proposed by the Commission

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

Amendment

(b) they pursue objectives, publicly stated in their statute or other relevant governance document, that are in the collective interest of the group of business users or corporate website users that they represent;

Amendment 129

Proposal for a regulation
Article 12 – paragraph 2 – subparagraph 1 – point c
Text proposed by the Commission
(c) they are of a non-profit making character.

Amendment
(c) they are of a non-profit making character and are transparent about their source of funding.

Amendment 130
Proposal for a regulation
Article 12 – paragraph 2 – subparagraph 2

Text proposed by the Commission
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 Member State concerned.

Amendment
In Member States shall set up or nominate public bodies for the purposes of this Article. 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 Member State concerned.

Amendment 131
Proposal for a regulation
Article 12 – paragraph 3

Text proposed by the Commission
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.

Amendment
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 or by providers of online search engines with the relevant requirements laid down in this Regulation.
Amendment 132

Proposal for a regulation
Article 12 a (new)

Text proposed by the Commission

Amendment

Art 12 a

Enforcement authorities

1. Each Member State shall designate a body or bodies responsible for adequate and effective enforcement of this Regulation. The body responsible for the effective enforcement of this Regulation may be the same body as referred to in Art 12.

2. Member States shall lay down the rules setting out the measures applicable to infringements of the provisions of this Regulation and shall ensure that they are implemented. The measures provided for shall be effective, proportionate and dissuasive.

3. The measures referred to in paragraph 2 shall be communicated to the Commission and made publicly available on the Commission’s website.

Amendment 133

Proposal for a regulation
Article 12 b (new)

Text proposed by the Commission

Amendment

Art 12 b

Monitoring

Member States shall closely monitor the application of this Regulation and shall designate national authorities to require providers of online intermediation services and online search engines to submit relevant information necessary for the monitoring and enforcement of this Regulation by the body or bodies referred
to in Article 12a. The information gathered by those authorities shall be provided to the Commission and to the EU Platform Observatory upon request.

Amendment 134

Proposal for a regulation
Article 13 – paragraph 1

Text proposed by the Commission

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, 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 135

Proposal for a regulation
Article 13 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2 a. Where an online intermediation service is primarily involved in one single sector where a sector specific code of conduct exists and is widely used, the Commission shall encourage the provider of the online intermediation service to adopt and implement the sector specific code of conduct.
Amendment 136
Proposal for a regulation
Article 13 a (new)

Text proposed by the Commission

Amendment

Article 13 a

EU Platform Observatory

In addition to those set out in Article 2 of Commission Decision C(2018) 2393, the EU Platform Observatory shall have the following tasks:

(a) monitoring and evaluating the implementation of this Regulation and in particular analysing the effects of Annex I on the market, taking into account the jurisprudence of Union and national courts; and

(b) making recommendations in accordance with Article 14 to the European Commission for the review of this Regulation.

Amendment 137
Proposal for a regulation
Article 14 – paragraph 1

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.

Amendment 138
Proposal for a regulation
Article 14 – paragraph 2

1. By [date: 18 months after the date of application], 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.

2. The first evaluation of this Regulation shall be carried out, in particular, with a view to the following:

(a) assessing the compliance with, and impact on the online platform economy of, the obligations laid down in Articles 3 to 8;

(b) assessing the impact and effectiveness of any established codes of conduct to improve fairness and transparency;

(c) investigating further the problems caused by the dependence of business users on online intermediation services, and problems caused by unfair trading practices by providers of online intermediation services, and to determine further to which extent those practices continue to be widespread;

(d) investigating whether the competition between goods or services offered by a business user and goods or services offered or controlled by a provider of online intermediation services constitutes fair competition and whether providers of online intermediation services misuse privileged data in this regard;

(e) assessing the effect of this Regulation on any possible imbalances in the relationships between providers of operating systems and their business users;

(f) assessing whether the scope of the Regulation, especially as regards the definition of ‘business user’, is suitable in
that it does not encourage bogus self-employment;

(g) reviewing, following recommendations from the Platform Observatory in accordance with Article 13a, the list of unfair commercial practices in Annex I;

The evaluation shall establish whether additional rules, including regarding enforcement, may be required to ensure a fair, predictable, sustainable and trusted online business environment within the internal market. Following the evaluation, the Commission shall take appropriate measures, which may include legislative proposals.

Amendment 139

Proposal for a regulation
Article 14 – paragraph 4

Text proposed by the Commission

4. In carrying out the evaluation of this Regulation, the Commission shall take into account the opinions and reports presented to it by the group of experts for the Observatory on the Online Platform Economy established in accordance with the Commission Decision C(2018)2393. It shall also take into account the content and functioning of any codes of conduct referred to in Article 13, where appropriate.

Amendment

4. In carrying out the evaluation of this Regulation, the Commission shall take into account the opinions and reports presented to it by the group of experts for the EU Platform Observatory established in accordance with the Commission Decision C(2018)2393 and having regard to the additional tasks of the EU Platform Observatory as established in Article 13a.

Amendment 140

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

Amendment

2. It shall apply from [date: nine] months following the day of its
Amendment 141

Proposal for a regulation
Annex I (new)

Text proposed by the Commission

Amendment

Annex I

Commercial practices to be regarded as unfair in all circumstances

(a) Imposing clauses unilaterally on the business users with the purpose of transferring liability to them in a way that contradicts the obligations on online intermediation services established in Articles 12 to 15 of Directive 2000/31/EC of the European Parliament and of the Council;

(b) Proposing retroactive contract clauses which are to the detriment of the business;

(c) Maintaining the legal right to use the business user’s information beyond what was specified in the contract after the contract between the online intermediary service provider and the business user has expired;

(d) Maintaining any clauses or pursuing any practices which make it unduly difficult for a business user to exercise its contractual right to terminate its relationship with an online intermediation service provider or which unfairly discourages a business user from terminating an agreement;

(e) Interfering in the commercial relationship between competing business users and consumers outside of those activities that are initiated on the online intermediation service.
EXPLANATORY STATEMENT

Introduction

The rapporteur welcomes the Commission’s proposal on promoting fairness and transparency in the online platform economy. There is an apparent need for a uniform and targeted set of mandatory rules to ensure a viable business environment in the future. In today’s online platform environment several critical imbalances exist between platforms on the one hand and business users on the other hand. These imbalances are ultimately to the detriment of the consumer as they can lead to reduced competition, which in turn leads to a narrower variety of goods and services as well as higher consumer prices.

The rapporteur acknowledges the very horizontal nature of this Regulation and thus the approach taken by the Commission. This Regulation is not a sector-specific or problem-specific tool, but should be suited to address the issues of the online platform economy as a whole. The Commission’s proposal does in many ways adequately address the lack of transparency concerning many online platforms, but it does too little to address the issues of the lack of fairness in the same online platform environment. The rapporteur finds it crucial that the current deficit of fairness is addressed in greater detail than in the Commission’s proposal and that more measures are taken to better address the issue.

The Commission’s proposal addresses the issue of enforcement through redress possibilities and an option for mediation. However, the rapporteur sees a need to more actively involve Member States in the redress system and suggests concretely that public bodies should be set up or nominated in all Member States in order to ensure that the provisions in this Regulation will be enforced throughout the Union.

Lastly, the rapporteur considers it crucial to clarify that this regulation does not affect the possibility of a platform to be regarded as an employer under labour regulation if it behaves as such towards its business users. Establishing whether a platform is simply a provider of an intermediation service to business users, or rather an employer, should always be based the actual nature of the economic activity performed by the online platform and not any ostensible arrangements for its performance.

The impact of the proposal on consumers

The rapporteur believes that wherever the dominant position of platforms make them become gatekeepers of the information, choice and prices, and certain minimum standards of fairness and transparency are not guaranteed, the consumer welfare is damaged. Moreover, lack of transparency and legal uncertainty in the platform economy, including in business-to-business relations, may diminish consumer trust in the online economy. This Regulation should therefore improve the fairness and transparency for business users of platforms, but also, bear in mind that the measures must guarantee consumer access to a competitive, fair, and transparent online ecosystem. Specifically, one issue that has been identified is the prevalence of business users being discriminated when competing with certain products on online platforms that appear as default options to the consumer. This is especially true when the online platform itself provides a service without informing the consumers that there are viable
alternatives on the platform. Thus, in Article 6, platforms that provide goods or services that compete with those provided by business users should allow consumers to select which good or service to use as default when using the platform for the first time. The consumer should also be allowed not to select a default option at all.

**Scope of the Proposal and Definitions**

To a large extent, the rapporteur welcomes the Commission proposal’s scope and definitions contained in articles 1 and 2, and believes that it is adequate and fit for the purpose, targets and objectives of the regulation. However, some changes have been made in these articles in order to provide more clarity to the proposal. Primarily, the inclusion of ‘fairness’ as a part of the subject matter and scope of the proposal was deemed necessary, following from the title of the proposal. Secondly, the draft report stresses the difficulty that in certain cases exist of distinguishing between business users and non-business users of online intermediation services. This is an important distinction since business users who offer goods or services to consumers should, also be under stricter obligations towards consumers. For this purpose, a recital is introduced to stress that in line with the Commission proposal on amending Directive 2011/83/EU within the ‘Directive on better enforcement and modernisation of EU consumer protection rules’ (2018/0090 (COD)), it should not be in the discretion of the platform to distinguish whether a user is a business user or a non-business user.

The rapporteur also believes that the definition of ‘terms and conditions’ should be modified to make it applicable to all cases and contracts, independently of whether or not the terms and conditions are ‘unilaterally determined by the provider of online intermediation services’, in order to avoid cases of possible indirect or hidden abusive practices from powerful online platforms. As some platforms have a strong or even dominant position in the market, the bargaining power of business users could in many cases be inadequate to properly negotiate fair terms and conditions of the contract, even where the terms and conditions have supposedly been bilaterally negotiated. The rapporteur believes that fairness and transparency should be guaranteed in all contracts. Therefore an amendment is necessary to make it clear that the requirements of the Regulation should apply to all contracts.

**Fair and Proportionate Terms and Conditions**

The rapporteur also welcomes the draft proposal of Article 3 but introduces certain modifications in order to supplement the Commission proposal. The rapporteur considers that in addition to transparency requirements, an additional requirement for the terms and conditions to be ‘fair and proportionate’ is necessary. The rapporteur suggests that terms and conditions should not be considered fair and proportionate where, for example, they grossly deviate from good commercial conduct in the field of economic activity in which the platform operates, or are contrary to good faith and fair dealing. The introduction of this requirement constitutes an important step towards combatting abusive practices in the online platform economy.

**Ancillary goods and services**

A new article and the corresponding definition is introduced on ‘ancillary goods and services’, meaning goods and services offered to the consumer in addition to and as complementary to the primary good or service offered by the business user through the
More transparency on additional channels

In order to ensure that business users have sufficient clarity of where their services or goods are being marketed and to whom, the rapporteur considers that platforms should ensure transparency towards their business users regarding any additional channels or affiliate programs that the platform is using to market said goods and services. Business users should have, as a matter of principle, the right to know where and under which conditions their name and brand would be used.

More transparency in the ranking parameters

The rapporteur also welcomes the proposed drafting of Article 5 as a balanced starting point. However, it should also be ensured, similarly to the requirement in Article 3, that the information regarding ranking is also given clearly and unambiguously. Furthermore, the rapporteur believes that parameters determining ranking should be applied in a non-discriminatory manner to business users, meaning that business users that are in the same situation should be treated in the same manner in the ranking. The rapporteur also considers that to ensure trust in the online platform economy, transparency towards business users is only one part of the equation. The consumers should also have the possibility to access information about the parameters affecting the ranking of online intermediations services. A legal obligation should thus be introduced in Union law to ensure information is also provided to consumers. In the rapporteur’s view, while the information offered to the consumer must be presented in a clear and comprehensible manner suitable to the needs of the consumer, both the parties who offer and those who search for a good or service should have similar information so that they are able to take informed decisions based on transparency about the search.

Access to data

The rapporteur believes that platforms should not disclose to third parties for commercial purposes any data generated by the transactions of a business user, without the consent of the business user. The rapporteur introduces an amendment to tackle situations where platforms might abuse data generated by the transactions of their business users, which could lead to unfair competition positions. The rapporteur also wants to specify that this regulation does not influence or prejudice the application of the GDPR.

Mediation

Since platforms should always be required to identify mediators with which they are willing to engage, and should be obliged to engage in mediation in good faith, the obligation of mediation should be established in a way that prevents abuse of the mediation system by
business users. As such, business users should also be obliged to engage in mediation in good faith. Furthermore, this regulation should address the issue of possible abuse of the mediation obligation by repeated or spurious cases by a business user. As such, in certain clearly defined exceptional cases, the platform should not be obliged to engage in mediation with a business user.

The Platform Observatory and review of the regulation

The rapporteur welcomes the establishment of the Platform Observatory by the European Commission, however considers that since the Platform Observatory will be tasked with an important role in monitoring the developments in the online platform economy and the application of this regulation, the Platform Observatory should be established as a body under this Regulation rather than as an expert group established by a Commission decision, as it is the case with several other similar observatories or similar bodies in other pieces of legislation.

Furthermore, the rapporteur wishes to prescribe that this Regulation should be supplemented by further and more prescriptive legislation where and if the transparency provisions established by this Regulation prove to be insufficient to handle future imbalances and unfair trading practices. The speed of the market developments in this area might display the need for such actions especially when addressing sector specific problems.
26.11.2018

OPINION OF THE COMMITTEE ON LEGAL AFFAIRS

for the Committee on the Internal Market and Consumer Protection


Rapporteur for opinion (*): Francis Zammit Dimech

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

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 market¹.

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

¹ P8_TA(2017)0272.
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.
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.

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
(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 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 6

Proposal for a regulation
Recital 8

(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.

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.

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. 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.


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

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

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

(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. By exception and subject to clear provisions of terms and conditions, that notice period should not apply where, and
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) 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 12

Proposal for a regulation
Recital 14 a (new)

Text proposed by the Commission

(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. 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. In
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.

Amendment 15
Proposal for a regulation
Recital 16 a (new)

Text proposed by the Commission

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

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 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 defined in Directive (EU) 2016/943 of the European Parliament and of the Council\(^2\) when complying with this requirement to disclose the main ranking parameters, the

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 the requirement to disclose ranking parameters should be without prejudice to Directive (EU) 2016/943 of the European Parliament and of the Council\(^2\) while taking into account the provisions on lawful acquisition, use and disclosure,
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, 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, 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.


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, 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,

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 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

(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

(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

(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.24

_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 privacy life and the protection of personal data in electronic communications, in particular Regulation (EU) 2016/679 of the European Parliament and of the Council24, Directive (EU) 2016/68024a and Directive 2002/58/EC24b. 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.

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 conditions through other means than through those online intermediation services.

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.
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)**

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<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
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<tr>
<td>(21 a) <strong>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.</strong></td>
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**Amendment 26**

**Proposal for a regulation**

**Recital 22**

<table>
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<td>(22) <strong>In order to enable business users, including those whose use of the relevant online intermediation services might have</strong></td>
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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 and effective 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 obligations of this Regulation, the internal complaint-handling systems should

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\(^{25}\). 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.


Amendment 28

Proposal for a regulation

Recital 25

\textit{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. \textit{However, that proportion should never be less than half of those costs.}

\textit{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.
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\textsuperscript{27};


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\textsuperscript{27} or they constitute device operating systems and in that capacity they act as intermediaries between online application developers and consumers;


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

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 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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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

(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
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.

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 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*

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*

Article 4

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.

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).

*Amendment*

Article 4

*Restriction*, suspension and termination

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 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 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

Amendment

Article 5
Ranking

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

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.

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.

1a. 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
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.


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;
   (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

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 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.
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.

(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;

(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 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

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 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
main economic, commercial or legal considerations for those restrictions.

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. **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.

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

Amendment
That information shall include the total number of complaints lodged, the main types of complaints and the average time period needed to process the complaints.

Amendment 54
Proposal for a regulation
Article 9 – paragraph 5
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/EC29.during the first three years or start up phase of their business operations.


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

Mediation

Article 10

Providers of online intermediation services shall 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.

Amendment

Mediation

Article 10

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, 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. Providers of online intermediation 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.

3. The parties involved in the 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
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.

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.

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.
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 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

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 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
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 Member State concerned.

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 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.


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

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.
### Title
Promoting fairness and transparency for business users of online intermediation services

### References

### Committee responsible
- **Date announced in plenary:** 28.5.2018
  - IMCO

### Opinion by
- **Date announced in plenary:** 28.5.2018
  - JURI

### Associated committees - date announced in plenary
- 13.9.2018

### Rapporteur
- **Date appointed:** 9.7.2018
  - Francis Zammit Dimech

### Discussed in committee
- 24.9.2018
- 11.10.2018

### Date adopted
- 20.11.2018

### Result of final vote
- +: 24
- -: 0
- 0: 0

### Members present for the final vote

### Substitutes present for the final vote
Geoffroy Didier, Pascal Durand, Jytte Guteland, Virginie Rozière, Kosma Złotowski
# Final Vote by Roll Call in Committee Asked for Opinion

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Key to symbols:
+ : in favour
- : against
0 : abstention
OPINION OF THE COMMITTEE ON INDUSTRY, RESEARCH AND ENERGY

for the Committee on the Internal Market and Consumer Protection


Rapporteur for opinion: Anna Záborská

SHORT JUSTIFICATION

Online intermediary services and online search engines play a crucial role in enabling and promoting digital trade. In order to strengthen the trust of business users and consumers and encourage them to take part in the vast digital ecosystems created by online platforms, it is necessary to set minimum standards for their services.

The Regulation proposed by the Commission is a first attempt to chart a new territory. It promotes a balanced set of rules for online intermediary services and online search engines when dealing with business users, based on fairness and transparency and addressing main concerns of all stakeholders while protecting entrepreneurial freedom and leaving enough space for innovation.

In this context, the Rapporteur however believes that a more ambitious approach could deliver better results.

She proposes to strengthen the principle of fairness. Business users should have the right to access data originating in mutual transactions. At the same time, restrictions imposed on business users by some online intermediation services to offer different conditions through other means should not be allowed.

On the other hand, platforms should be allowed to act swiftly when facing abuse or fraud. Their ability to handle complaints should not be stifled by burdensome administrative requirements. Finally, mediation promoted by this legislative proposal can only work if its costs are divided fairly between both participating parties.
The Rapporteur also wishes to reinforce the principle of transparency in cases of differentiated treatment and by clarifying the requirements concerning main ranking parameters.

An ambitious proposal should also consistently impose the same rules on online platforms and search engines whenever they behave in the same way.

The Rapporteur believes that the first revision of this Regulation should reflect the high speed of evolution of digital economy and be ready two years after the date of entry into force.

**AMENDMENTS**

The Committee on Industry, Research and Energy 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

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<th>Recital 2</th>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
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<td>(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.</td>
<td>(2) Online intermediation services can be crucial for the commercial success of undertakings who use such services to reach consumers. <em>This worthwhile role must be carried out in a transparent and trustworthy manner, subject to clear rules laid down in advance for all actors and provided that a level playing field is established for all those involved in the operations.</em> 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 <strong>self-employed</strong>, micro, small and medium-sized enterprises, on those services in order for them to reach consumers. Given that increasing dependence <em>which may affect large businesses in addition to self-employed, micro, small and medium-sized enterprises</em>, the providers of those services often have superior bargaining power,</td>
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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.

Amendment 2

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.

Justification

As a principle all transactions have the said character and importance. Broader understanding of transactions facilitated by online intermediation services or online search engines leads to better understanding of the complexity of issues at hand.

Amendment 3
Proposal for a regulation
Recital 5 a (new)

Text proposed by the Commission

(5a) EU legislation should be guided by the concept of “as little as possible and as much as necessary”, which means necessity of rules fitting for the digital age and open and technologically neutral enough to accommodate future developments. The Commission’s initiative to analyse the role of platforms in the Digital Economy ensures a comprehensive and similar approach to framework across the digital market, while a “one size fits all” solution may have a chilling effect on innovation and put European companies at a competitive disadvantage in the global economy.

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 time, 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. They should promote fair and proportionate business behaviour 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 transparency as regards the ranking of corporate website users, especially in the search results generated by online search engines, including voice assistants. At the same time, those rules should be such as to safeguard the important innovation potential of the wider online platform economy and allow for a healthy
competition. In line with the development of the sector, the European Commission should examine the reinforcement of the transparency and fairness provisions set in this Regulation either by sector specific legislation or a review of this Regulation.

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

(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. In accordance with Union law\(^1\), this would mean that the online intermediation services and online search engines have targeted or directed sales to consumers located in one or more Member States. 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.
consumers.

Amendment 6

Proposal for a regulation
Recital 9

Text proposed by the Commission

(9) Examples of online intermediation services covered by this Regulation should consequently include online e-commerce market places, including collaborative ones on which business users are active, online software applications services and online social media services. However, this Regulation should not apply to online advertising serving tools or online advertising exchanges which are not provided with the aim of facilitating the initiation of direct transactions and which do not involve a contractual relationship with consumers. This Regulation should also not apply to online payment services, since they do not themselves meet the applicable requirements but are rather inherently auxiliary to the transaction for the supply of goods and services to the consumers concerned.

Amendment

(9) Examples of online intermediation services covered by this Regulation should consequently include online e-commerce market places, including collaborative ones on which business users are active, online software applications services and online social media services. However, this Regulation should not apply to online advertising serving tools or online advertising exchanges which are not provided with the aim of facilitating the initiation of direct transactions and which do not involve a contractual relationship with consumers. This Regulation should also not apply to online payment services, since they do not themselves meet the applicable requirements but are rather inherently auxiliary to the transaction for the supply of goods and services to the consumers concerned. Also, this Regulation should not apply to electronic communications networks or services or audio-visual media services, which are subject to sector specific regulation in relation to transparency, redress and non-discrimination.

Amendment 7

Proposal for a regulation
Recital 11
(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\textsuperscript{21}. The definition of an online search engine should be understood as technologically neutral and recognise the variety of search services and data inputs and outputs.


Amendment 8

Proposal for a regulation
Recital 12

(12) In order to effectively protect business users where needed, this Regulation should apply to the terms and conditions of a contractual relationship, regardless of their name or form, that have not been individually negotiated by the parties. 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 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.
Text proposed by the Commission

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

Amendment

(13) To ensure that the general terms and conditions of a contractual relationship enable business users to determine the commercial conditions for the use, restriction, 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 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. Terms and conditions should not unjustifiably discriminate between business users.

Amendment 10

Proposal for a regulation
Recital 13 a (new)

Text proposed by the Commission

(13 a) The general terms and conditions may in particular provide that practices or security threats which risk causing imminent harm to the provider, business users or consumers, whether due to breach of security, fraud, abuse of data or otherwise, constitute grounds for decisions to restrict, suspend or terminate the provision of online intermediation services. A decision to restrict, suspend or terminate service on grounds of risk of imminent harm should be proportionate to the risk sought prevented by the measure, and service termination should only be implemented where a temporary
restriction or suspension would not suffice to effectively address the risk.

Amendment 11
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 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.

Amendment

(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 before being implemented. By way of exception, that notice period should not apply where, and to the extent that, it is waived in an unambiguous manner by the business user concerned. Nor should it apply 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.

Amendment 12
Proposal for a regulation
Recital 15

Text proposed by the Commission

(15) In order to protect business users it

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 be null and void, that is, deemed to have never existed with effects erga omnes and ex tunc.**

**Amendment 13**

Proposal for a regulation
Recital 15 a (new)

*Text proposed by the Commission*

(15 a) **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 14**

Proposal for a regulation
Recital 16
(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. 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.

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22 Commission Recommendation (EU) No 2018/334 of 1 March 2018 on measures to effectively tackle illegal content online (OJ
Amendment 15
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 characteristics of the actual goods or services offered by the business user, and their relevance to the consumers of the specific online intermediation services.

Amendment

(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 the criteria, processes, specific signals incorporated into algorithms or other adjustment or demotion mechanisms used in connection with the ranking, that are of material importance for an adequate understanding of the operation of the ranking system. 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 their relevance to the consumers of the specific online intermediation services. When offering goods and services as a result of ranking influenced against remuneration or due to control by the provider, the provider of online
intermediation services should inform about this fact by including the word “SPONSORED” or “AD” in the offering.

Amendment 16

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 defined in Directive (EU) 2016/943 of the

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 publicly accessible description of the parameters of material importance for an adequate understanding of how the ranking of all indexed websites is determined, 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 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. The requirement to disclose
European Parliament and of the Council 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.

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Amendment 17

Proposal for a regulation
Recital 18 a (new)

Text proposed by the Commission

(18 a) Given the importance of comments and reviews for business users, their transparency and reliability needs to be reinforced. Online intermediation services or online search engines providers shall protect business users and themselves against ranking manipulation by fake reviews and comments. They should deploy solutions for verification of comments and reviews as well as their portability from one intermediation service and search engine to another. Providers shall make publically available the information about the conditions under which a comment or review can be removed.

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, 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.

Amendment

(19) Where a provider of online intermediation services or online search engine itself offers certain goods or services to consumers through its own online intermediation services or online search engine, or does so through a business user which it controls, that provider may compete directly with other business or corporate website users of its services which are not controlled by the provider. In such situations, in particular, it is important to establish a general rule that the provider of online intermediation services or online search engines acts in a manner which is proportionate, transparent and not detrimental to competition. Providers of online intermediation services or online search engines should make available a description of any differentiated treatment, whether through legal, commercial or technical means, including but not limited to the setting of a default option that favours the provider or online search engine or any entity it controls, that it might give in respect of goods or services it offers itself compared to those offered by business or corporate website 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.

Amendment 19

Proposal for a regulation
Recital 20

Text proposed by the Commission

(20) The ability to access and use data, including personal data, can enable

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. Processing of personal data should comply with Regulation (EU) 2016/679 of the European Parliament and of the Council.\textsuperscript{24}

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Amendment 20

Proposal for a regulation

Recital 20 a (new)

\textit{Text proposed by the Commission}

(20a) Certain practices can be conclusively treated as unfair in all
circumstances. The Platform Observatory should compile a list of such practices and continuously review it, and recommend updates to the Commission.

Amendment 21

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 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

(21) Providers of online intermediation services *should not* 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. Such restrictions originate in a specific business model and have been a cause of fragmentation of the single European digital market.

Amendment 22

Proposal for a regulation
Recital 22

Text proposed by the Commission

(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

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.

Amendment 23

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 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, this Regulation is designed, so far as such costs are concerned, to apply in a proportionate manner. Moreover, it should, in principle, be adaptuated to the size of the business user concerned, in the context of the third-party dispute resolution process.

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 this way, it can be easily applied also by providers of online intermediation services which constitute small enterprises, in line with the relevant provisions of Commission Recommendation 2003/361/EC. 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
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\textsuperscript{25}.


Amendment 24

Proposal for a regulation

Recital 24

\textit{Text proposed by the Commission}

(24) Mediation can offer providers of online intermediation services and their business users a means to resolve disputes in a satisfactory manner, without having to use judicial proceedings which can be lengthy and costly. Therefore, providers of online intermediation services should facilitate mediation by, in particular, identifying mediators with which they are willing to engage. Mediators which provide their services from a location outside the Union should only be identified where it is guaranteed that the use of those services does not in any way deprive the business users concerned of any legal protection offered to them under Union law or the law of the Member States, including the requirements of this Regulation and the applicable law regarding protection of personal data and trade secrets. In order to be accessible, fair, and as swift, efficient and effective as possible, those mediators should meet certain set criteria.

\textit{Amendment}

(24) Mediation can offer providers of online intermediation services and their business users a means to resolve disputes in a satisfactory manner, without having to use judicial proceedings which can be lengthy and costly. Therefore, providers of online intermediation services should facilitate mediation by, in particular, identifying mediators with which they are willing to engage. Mediators which provide their services from a location outside the Union should only be identified where it is guaranteed that the use of those services does not in any way deprive the business users concerned of any legal protection offered to them under Union law or the law of the Member States, including the requirements of this Regulation and the applicable law regarding protection of personal data and trade secrets. In order to be accessible, fair, and as swift, efficient and effective as possible, those mediators should meet certain set criteria. The European Commission should publish guidelines to help providers to meet the necessary requirements for mediation.
Amendment 25

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, *including whether the case was brought in good faith.* To that aim, the mediator should suggest which proportion is reasonable in the individual case.

Amendment 26

Proposal for a regulation
Recital 26

*Text proposed by the Commission*

(26) In order to facilitate the settlement of disputes relating to the provision of online intermediation services using mediation in the Union, the Commission should encourage the setting up of specialised mediation organisations, which are currently lacking. The involvement of mediators having specialist knowledge of online intermediation services and online search engines as well as of the specific industry sectors within which those services are provided should add to the confidence both parties have in the mediation process and should increase the likelihood of that process leading to a swift, just and satisfactory outcome.

*Amendment*

(26) In order to facilitate the settlement of disputes relating to the provision of online intermediation services using mediation in the Union, the Commission, *in cooperation with the Member States,* should encourage the setting up of specialised mediation organisations, which are currently lacking. The involvement of mediators having specialist knowledge of online intermediation services and online search engines as well as of the specific industry sectors within which those services are provided should add to the confidence both parties have in the mediation process and should increase the likelihood of that process leading to a swift, just and satisfactory outcome.

Amendment 27
Proposal for a regulation
Recital 27

*Text proposed by the Commission*

(27) Various factors, such as limited financial means, a fear of retaliation and exclusive choice of law and forum provisions in terms and conditions, can limit the effectiveness of existing judicial redress possibilities, particularly those which require business users or corporate website users to act individually and identifiably. To ensure the effective application of this Regulation, organisations, associations representing business users or corporate website users, as well as certain public bodies set-up in Member States, should be granted the possibility to take action before national courts. Such action before national courts should aim to stop or prohibit infringements of the rules set out in this Regulation and to prevent future damage that could undermine sustainable business relationships in the online platform economy. In order to ensure that such organisations or associations exercise that right effectively and in an appropriate manner, they should meet certain criteria. Considering the particular status of the relevant public bodies in Member States where such bodies have been set up, it should only be required that those have been specifically charged, in accordance with the relevant rules of national law, with bringing such actions either in the collective interest of the parties concerned or in the general interest, without there being a need to apply those criteria to such public bodies. Any such actions should in no way affect the rights of the business users and corporate website users to take judicial action on an individual basis.

*Amendment*

(27) Various factors, such as limited financial means, a fear of retaliation and exclusive choice of law and forum provisions in terms and conditions, can limit the effectiveness of existing judicial redress possibilities, particularly those which require business users or corporate website users to act individually and identifiably. To ensure the effective application of this Regulation, organisations, associations representing business users or corporate website users, as well as certain public bodies set-up in Member States, should be granted the possibility to take action before national courts. Such action before national courts should aim to stop or prohibit infringements of the rules set out in this Regulation and to prevent future damage that could undermine sustainable business relationships in the online platform economy. In order to ensure that such organisations or associations exercise that right effectively and in an appropriate and harmonised manner, they should meet certain transparency criteria and be registered with the Transparency Register. Considering the particular status of the relevant public bodies in Member States where such bodies have been set up, it should only be required that those have been specifically charged, in accordance with the relevant rules of national law, with bringing such actions either in the collective interest of the parties concerned or in the general interest, without there being a need to apply those criteria to such public bodies. Any such actions should in no way affect the rights of the business users and corporate website users to take judicial action on an individual basis.
Proposal for a regulation
Recital 28 a (new)

Text proposed by the Commission

(28 a) Considers that EU legislation should be guided by the concept of “as little as possible and as much as necessary”, which means necessity of rules fitting for digital age and open and technologically neutral enough to accommodate future developments;

Appreciates the Commission’s initiative to analyse the role of platforms in the Digital Economy, ensuring a comprehensive and similar approach to framework across the digital market; considers that “a one size fits all” solution may have a chilling effect on innovation and put European companies at a competitive disadvantage in the global economy;

Amendment 29

Proposal for a regulation
Article 1 – paragraph 1

Text proposed by the Commission

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.

Amendment

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

Amendment 30

Proposal for a regulation
Article 1 – paragraph 2

Text proposed by the Commission

2. This Regulation shall apply to online intermediation services and online search engines provided, or offered to be

Amendment

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 31

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

Text proposed by the Commission

Amendment

2 a. This Regulation shall apply in so
far as there are no specific provisions with
the same objective in other Union law and
does not affect the application of the
relevant rules of Union law applicable in
specific areas.

Amendment 32

Proposal for a regulation
Article 2 – paragraph 1 – point 2 – point b

Text proposed by the Commission

Amendment

(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;

(b) they allow business users to offer
goods or services to consumers by
facilitating direct transactions between
those business users and consumers,
irrespective of where those transactions are
ultimately concluded;

Amendment 33

Proposal for a regulation
Article 2 – paragraph 1 – point 2 – point c
(c) they are provided to business users on the basis of contractual relationships between, on the one hand, the provider of those services and, on the other hand, both those business users and the consumers to which those business users offer goods or services; with a view to receiving direct or indirect remuneration:

**Amendment 34**

**Proposal for a regulation**  
**Article 2 – paragraph 1 – point 5**

(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;

(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 information or links in which information related to the requested content can be found;

**Amendment 35**

**Proposal for a regulation**  
**Article 2 – paragraph 1 – point 7**

(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;

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

**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

Proposal for a regulation
Article 3 – paragraph 1 – point a

Text proposed by the Commission

(a) are drafted in clear and unambiguous language;

Amendment

(a) are fair and proportionate, drafted in clear and unambiguous language;

Amendment 38

Proposal for a regulation
Article 3 – paragraph 1 – point c

Text proposed by the Commission

(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

(c) set out the non-arbitrary grounds for decisions to restrict, suspend or terminate, in whole or in part, the provision of their online intermediation services to business users.

Amendment 39
Proposal for a regulation
Article 3 – paragraph 1 – point c a (new)

Text proposed by the Commission

Amendment

(c a) inform the business users about any additional distribution channels and affiliate programs through which the goods and services offered by the business users may be distributed.

Amendment 40

Proposal for a regulation
Article 3 – paragraph 2

Text proposed by the Commission

Amendment

2. Terms and conditions, or specific provisions thereof, which do not comply with the requirements of paragraph 1 shall not be binding on the business user concerned where such non-compliance is established by a competent court.

2. Terms and conditions, or specific provisions thereof, which do not comply with the requirements of paragraph 1 shall be considered voidable.

Amendment 41

Proposal for a regulation
Article 3 – paragraph 5

Text proposed by the Commission

Amendment

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.

5. Paragraph 3 shall not apply where a provider of online intermediation services is:

Amendment 42

Proposal for a regulation
Article 3 – paragraph 5 – point a (new)
Text proposed by the Commission

Amendment

(a) 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 43

Proposal for a regulation
Article 3 – paragraph 5 – point b (new)

Text proposed by the Commission

(b) addressing an imminent danger threatening to harm consumers or business users or the functioning of the online intermediation services.

Amendment 44

Proposal for a regulation
Article 4 – paragraph 1

Text proposed by the Commission

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.

Amendment

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. Termination and suspension shall be, where possible and proportionate, preceded by a notification indicating the date that the suspension or termination will take effect and opportunity to clarify or re-establish compliance.
Amendment 45

Proposal for a regulation
Article 4 – paragraph 2

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).

Amendment

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). If the decision referred to in paragraph 1 is based on a suspicion that a behaviour or practice of a business user may cause harm to consumers or the platform, a reference to relevant provisions in the terms and conditions shall be provided.

Amendment 46

Proposal for a regulation
Article 5 – paragraph 1 – subparagraph 1

Text proposed by the Commission

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.

Amendment

Providers of online intermediation services shall set out in their terms and conditions the main parameters determining ranking and the relative importance of those main parameters as opposed to other parameters.

Amendment 47

Proposal for a regulation
Article 5 – paragraph 1 – subparagraph 2

Text proposed by the Commission

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

Amendment

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.

Amendment 48

Proposal for a regulation
Article 5 – paragraph 1 – subparagraph 2 – point a (new)

Text proposed by the Commission

(a) include in its terms and conditions a description of those possibilities and of the effects of such remuneration on ranking;

Amendment 49

Proposal for a regulation
Article 5 – paragraph 1 – subparagraph 2 – point b (new)

Text proposed by the Commission

(b) include the word “SPONSORED” or “AD” when offering goods and services whose ranking is influenced against remuneration or by control by the provider over a business user.

Amendment 50

Proposal for a regulation
Article 5 – paragraph 2

Text proposed by the Commission

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 indexed websites.

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

Amendment 51

Proposal for a regulation
Article 5 – paragraph 3 – introductory part

Text proposed by the Commission

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:

Amendment

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

Amendment 52

Proposal for a regulation
Article 5 – paragraph 3 – point b

Text proposed by the Commission

(b) the relevance of those characteristics for those consumers;

Amendment

deleted

Amendment 53

Proposal for a regulation
Article 5 – paragraph 3 – point c

Text proposed by the Commission

(c) as regards online search engines, the design characteristics of the website used by corporate website users.

Amendment

(c) as regards online search engines, the design characteristics of the website indexed.

Amendment 54

Proposal for a regulation
Article 5 – paragraph 4
Text proposed by the Commission

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.

Amendment

4. When providing information about ranking parameters, providers of online intermediation services and online search engines shall not disclose any information that could be used to lower the standard of protection of business users and consumers against malicious business practices such as deception. This Article shall be without prejudice to Directive (EU) 2016/943.

Amendment 55

Proposal for a regulation
Article 6 – paragraph 1 (new)

Text proposed by the Commission

-1 Where a provider of online intermediation services or of online search engines differentiates depending on whether goods or services are offered by the provider itself or any entity which it controls, or by other entities, such differentiation shall, where allowed, be proportionate, transparent and not detrimental to fair competition compared to a situation without such differentiation.

Amendment

1a. Providers of online search engines shall provide on their websites 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 engines, by either that provider itself or any business users
which that provider controls and, on the other hand, other business users.

Preferential treatment in ranking of search results of goods and services offered by the provider of online search engine itself or any business user which that provider controls is prohibited, unless it is granted under conditions that apply to all business users.

Amendment 57

Proposal for a regulation
Article 6 – paragraph 2 – introductory part

Text proposed by the Commission

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:

Amendment

2. The descriptions referred to in paragraphs 1 and 1a 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 engine relating to any of the following:

Amendment 58

Proposal for a regulation
Article 6 – paragraph 2 – point a

Text proposed by the Commission

(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;

Amendment

(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 corporate websites or consumers provide for the use of the online intermediation services concerned or which are generated through the provision of those services;

Amendment 59
Proposal for a regulation
Article 6 – paragraph 2 – point b.a (new)

Text proposed by the Commission

Amendment
(b.a) default settings;

Amendment 60

Proposal for a regulation
Article 6 – paragraph 2 – point d

Text proposed by the Commission

Amendment
(d) access to, or conditions for use of, services that are directly connected or ancillary to 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 or online search engine services concerned.

Amendment 61

Proposal for a regulation
Article 7 – paragraph 1

Text proposed by the Commission

Amendment
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.

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

Amendment 62

Proposal for a regulation
Article 7 – paragraph 2 – introductory part
2. Through the description referred to in paragraph 1, providers of online intermediation services shall **adequately inform business users at least of the following:**

**Amendment 63**

Proposal for a regulation
Article 7 – paragraph 2 – point a

**Text proposed by the Commission**

(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**

(a) whether the provider of online intermediation services or the provider of online search engine has access to personal data or other data, or both, which business users or consumers or corporate websites 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 64**

Proposal for a regulation
Article 7 – paragraph 2 – point b

**Text proposed by the Commission**

(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;

**Amendment**

(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 engine 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;
Amendment 65
Proposal for a regulation
Article 7 – paragraph 2 – point c

_text proposed by the Commission_

(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.

Amendment 66
Proposal for a regulation
Article 7 – paragraph 2 a (new)

_text proposed by the Commission_

2 a. Without prejudice to relevant Union law applicable to the protection of personal data and privacy, providers of online intermediation services or online search engines shall grant business users or corporate website users access to data they have acquired as a result of the commercial activity of the respective business user or corporate website. The data shall be provided in aggregate form and in a machine readable, commonly used and standardised format.

Amendment 67
Proposal for a regulation
Article 8 – paragraph 1

_text proposed by the Commission_

1. _Where, in the provision of their_ 1. Providers of online intermediation
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.

Amendment 68

Proposal for a regulation
Article 9 – paragraph 1 – subparagraph 1

*Text proposed by the Commission*

Providers of online intermediation services
shall provide for an internal system for
handling the complaints of business users.

*Amendment*

Providers of online intermediation services
shall provide for an internal system for
handling the complaints of business users
and ensure they are resolved within a
reasonable timeframe.

Amendment 69

Proposal for a regulation
Article 9 – paragraph 2 – point a

*Text proposed by the Commission*

(a) duly consider complaints lodged
and the follow-up which they may need to
give to the complaint in order to
adequately address the issue raised, in a
manner which is proportionate to the
importance and complexity of that issue;

*Amendment*

(a) duly consider complaints lodged;

Amendment 70

Proposal for a regulation
Article 9 – paragraph 2 – point b
(b) process complaints swiftly and effectively, **taking into account the importance and complexity of the issue raised**;

**Amendment 71**

Proposal for a regulation
Article 9 – paragraph 2 – point c

(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 72**

Proposal for a regulation
Article 9 – paragraph 3

3. Providers of online intermediation services shall include in their terms and conditions all relevant information relating to the access to and functioning of their internal complaint-handling system.

**Amendment 73**

Proposal for a regulation
Article 9 – paragraph 4 – subparagraph 1

3. **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.** Providers of online intermediation services shall include in their terms and conditions all relevant information relating to the access to and functioning of their internal complaint-handling system.
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 74**

Proposal for a regulation

Article 9 – paragraph 4 – subparagraph 2

**Amendment**

Providers of online intermediation services shall **regularly review** the functioning and effectiveness of their internal complaint-handling system.

**Amendment 75**

Proposal for a regulation

Article 9 – paragraph 5

**Amendment**

That information shall include the total number of complaints lodged, the subject-matter of the complaints, the time period needed to process the complaints and the decision taken on the complaints.

**Amendment 76**

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**.

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Proposal for a regulation
Article 10 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Providers of online intermediation services shall 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.

Amendment

Proposal for a regulation
Article 10 – paragraph 2 – point b

Text proposed by the Commission

(b) their mediation services are affordable for an average business user of the online intermediation services concerned;

Amendment

(b) their mediation services are affordable;

Amendment 77

Proposal for a regulation
Article 10 – paragraph 3

Text proposed by the Commission

3. Providers of online intermediation 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.

Amendment

3. Independent mediation shall be voluntary and used only after redress options within the internal complaint-handling system have been exhausted. Providers of online intermediation services and business users shall engage in good faith in any attempt to reach an agreement through the mediation of any of the mediators identified in accordance with
paragraph 1, with a view to reaching an agreement on the settlement of the dispute.

Amendment 79

Proposal for a regulation
Article 10 – paragraph 4

Text proposed by the Commission

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.**

Amendment

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.

Amendment 80

Proposal for a regulation
Article 11 – paragraph 1

Text proposed by the Commission

The Commission shall encourage providers of online intermediation services as well as organisations and associations representing them to individually or jointly set up one or more organisations providing mediation services which meet the requirements specified in Article 10(2), for the specific purpose of facilitating the out-of-court settlement of disputes with business users arising in relation to the provision of those services, taking particular account of the cross-border nature of online intermediation services.

Amendment

The Commission, **in cooperation with the Member States**, shall encourage providers of online intermediation services as well as organisations and associations representing them to individually or jointly set up one or more organisations providing mediation services which meet the requirements specified in Article 10(2), for the specific purpose of facilitating the out-of-court settlement of disputes with business users arising in relation to the provision of those services, taking particular account of the cross-border nature of online services.
intermediation services.

Amendment 81

Proposal for a regulation
Article 12 – paragraph 2 – subparagraph 1 – introductory part

Text proposed by the Commission
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:

Amendment
Organisations or associations shall have the right referred to in paragraph 1 only where, at the time of bringing the action, and for the duration of the action, they meet all of the following requirements:

Amendment 82

Proposal for a regulation
Article 12 – paragraph 2 – subparagraph 1 – point a a (new)

Text proposed by the Commission
(a a) they are registered at the Transparency Register;

Amendment

Amendment 83

Proposal for a regulation
Article 12 – paragraph 2 – subparagraph 1 – point a b (new)

Text proposed by the Commission
(a b) they publicly disclose information about their membership, structure and funding;

Amendment

Amendment 84

Proposal for a regulation
Article 12 – paragraph 3

Text proposed by the Commission
3. The right referred to in paragraph 1

Amendment
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.

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 or online search engines with the relevant requirements laid down in this Regulation.

Amendment 85

Proposal for a regulation
Article 14 – paragraph 1

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.

Amendment

1. By [date: two 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.

Amendment 86

Proposal for a regulation
Article 14 – paragraph 3

Text proposed by the Commission

3. Member States shall provide any relevant information that the Commission may require for the purposes of drawing up the report referred to in paragraph 1.

Amendment

3. Member States and providers shall provide any relevant information that the Commission may require for the purposes of drawing up the report referred to in paragraph 1.
**PROCEDURE – COMMITTEE ASKED FOR OPINION**

<table>
<thead>
<tr>
<th>Title</th>
<th>Promoting fairness and transparency for business users of online intermediation services</th>
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<tbody>
<tr>
<td>Committee responsible</td>
<td>IMCO 28.5.2018</td>
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<tr>
<td>Opinion by</td>
<td>ITRE 28.5.2018</td>
</tr>
<tr>
<td>Associated committees - date announced in plenary</td>
<td>13.9.2018</td>
</tr>
<tr>
<td>Rapporteur</td>
<td>Anna Záborská 30.5.2018</td>
</tr>
<tr>
<td>Discussed in committee</td>
<td>24.9.2018</td>
</tr>
<tr>
<td>Date adopted</td>
<td>21.11.2018</td>
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| Result of final vote | +: 45  
-: 7  
0: 3 |
| Substitutes present for the final vote | Pilar Ayuso, Amjad Bashir, Gunnar Hökmark, Luděk Niedermayer, Davor Škrlec, Pavel Telička |
| Substitutes under Rule 200(2) present for the final vote | John Flack |
## FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

<p>| | |</p>
<table>
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<tr>
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<td>Dario Tamburrano</td>
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<tr>
<td>ENF</td>
<td>Christelle Lechevalier</td>
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<td>GUE/NGL</td>
<td>Jaromír Kohlíček</td>
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<td>NI</td>
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<td>S&amp;D</td>
<td>Zigmantas Balčytis, Adam Gierek, Theresa Griffin, Eva Kaili, Jeppe Kofod, Peter Kouroumbashev, Miat报业 Kumpula-Natri, Edouard Martin, Dan Nica, Patrizia Toia, Kathleen Van Brempt, Martina Werner, Flavio Zanonato, Carlos Zorrinho</td>
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<tr>
<td>VERTS/ALE</td>
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<td><strong>7</strong></td>
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<td>ECR</td>
<td>Amjad Bashir, Edward Czesak, John Flack, Zdzisław Krasnodębski, Evžen Tošenovský</td>
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<td>EFDD</td>
<td>Jonathan Bullock</td>
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<td>GUE/NGL</td>
<td>Xabier Benito Ziluaga, Paloma López Bermejo, Neoklis Sylikiotis</td>
</tr>
</tbody>
</table>

### Key to symbols:
- **+**: in favour
- **-**: against
- **0**: abstention
23.11.2018

OPINION OF THE COMMITTEE ON TRANSPORT AND TOURISM

for the Committee on the Internal Market and Consumer Protection


Rapporteur for opinion: Claudia Ţapardel

SHORT JUSTIFICATION

The rapporteur welcomes the Commission’s proposal on promoting fairness and transparency for business users of online intermediation services and considers that it is well balanced and addressing the lack of transparency in the online platform environment. The rapporteur acknowledges the principles-based approach and the horizontal nature of this Regulation, and the fact that, rather than focusing on a specific sector or problem, it aims to address the imbalances that exist between platforms and business users in today’s online platform economy. The present Regulation contributes to the creation of a clear and transparent legal environment for both online service providers and business users and contributes to the goals of a Digital Single Market. Given the variety of business models and the cross-border nature of the online platforms, the rapporteur considers that regulatory solutions should be harmonised at the European Union level in order to sustain the Digital Single Market and to avoid a possible fragmentation; therefore, the choice of a Regulation as a legislative instrument is welcome.

Although the potential dominant position of platforms may trigger them to engage in potentially harmful practices, which would limit and undermine businesses’ trust, the rapporteur wants to clarify that the notion that platforms hold a stronger position over their business is not a de facto situation. Given the horizontal nature of the present Regulation and the variety of online business models it addresses, the rapporteur believes that the online intermediation services and business users are interdependent and seeks to ensure that the Regulation does not cause unnecessary burden to either side. The rapporteur strikes to find the
balance between improving the transparency and ensuring fairness towards the business users, whilst ensuring access to a fair, open and competitive market in the online environment.

In the light of growing concerns regarding the harmful impact of MFN clauses (Most Favoured Nation clauses), the rapporteur considers that for consumers to benefit from a more open market, and to align efforts across the European Union, business users should be allowed to offer different conditions via alternative distribution channels. Furthermore, the rapporteur holds that to ensure transparency and fairness towards the business users, platforms must inform business users of any additional channels and use of their brands to market goods and services. The rapporteur is of the belief that business users should have control over their brand name and must have the right to be informed at all times, whenever platforms intend to use the said brands to market products and services. Lastly, the rapporteur considers that it is necessary to extend the time for business to implement the present Regulation to twelve months, given the fact that platforms shall implement significant changes. The rapporteur seeks to ensure that the transition period will not negatively affect platforms and business.

**AMENDMENTS**

The Committee on Transport and Tourism 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 2**

<table>
<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
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<tbody>
<tr>
<td>(2) <strong>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</strong></td>
<td>(2) <strong>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</strong></td>
</tr>
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RR\1171653EN.docx 193/236 PE627.635v02-00
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.

Amendment 2

Proposal for a regulation
Recital 4 a (new)

Text proposed by the Commission

(4 a) It is important to note that the term "business users", and by extension the scope of this Regulation, should also cover individuals working or providing services, including in the field of transport, by personally performing work via online platforms. This is not only about SMEs but also about people who may be categorised as independent economic entities or self-employed. Due to the rising number of individuals employed in this way in the economy it is vital that they are also covered and able to rely on the possibility of seeking redress. They should have the right to participate in the process of setting prices and working conditions by platforms as they are vulnerable to arbitrary delisting, a lack of access to personal data and discrimination.

Amendment 3

Proposal for a regulation
Recital 4 b (new)

Text proposed by the Commission

(4b) For certain sectors of the economy more recently opened to intra-Union
competition, online intermediation services and search engine both contribute greatly to the completion of the internal market. In such sectors, online intermediation services and search engines provide services to undertakings which had already established their own online trading channels and are not dependent on online intermediations services. In these cases, further transparency obligations should be considered from the business users to the online intermediation services, in the interest of fair competition and the consumers in the Union.

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 and that the online intermediation services are in the possession of sufficient information to provide consumers in the Union with timely, accurate and relevant services. 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, and further support it for the future.
Amendment 5
Proposal for a regulation
Recital 6 a (new)

Text proposed by the Commission

(6 a)  The information and transparency duties of the parties involved should be rigorously enforced in order for consumers to be able to trust the platforms and businesses they use and so as not to undermine their trust in the single market. All initiatives that enhance transparency of rating mechanisms and help establish reliable reputation criteria should be encouraged.

Amendment 6
Proposal for a regulation
Recital 6 b (new)

Text proposed by the Commission

(6b)  Better regulation in the digital age requires principle-based legislation coupled with complementary non-regulatory actions to effectively adapt to new technologies and new business models to prevent fragmentation of the single market;

Amendment 7
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 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.

Amendment 8
Proposal for a regulation
Recital 9

Text proposed by the Commission

(9) Examples of online intermediation services covered by this Regulation should consequently include online e-commerce market places, including collaborative ones on which business users are active, online software applications services and online social media services. However, this Regulation should not apply to online advertising serving tools or online advertising exchanges which are not provided with the aim of facilitating the initiation of direct transactions and which do not involve a contractual relationship with consumers. This Regulation should also not apply to online payment services, since they do not themselves meet the applicable requirements but are rather

Amendment

(9) Examples of online intermediation services covered by this Regulation should consequently include online e-commerce market places, including collaborative ones on which business users are active, such as online hotel reservation services, and any marketplace like functionality of online software applications services and online social media services and voice assistance services. However, this Regulation should not apply to online advertising serving tools or online advertising exchanges which are not provided with the aim of facilitating the initiation of direct transactions and which do not involve a contractual relationship with consumers. This Regulation should also not apply to
inherently auxiliary to the transaction for the supply of goods and services to the consumers concerned.

online payment services, since they do not themselves meet the applicable requirements but are rather inherently auxiliary to the transaction for the supply of goods and services to the consumers concerned or electronic communications networks or services or audiovisual media services, which are subject to sector specific regulation in relation to transparency, redress and non discrimination;

Amendment 9
Proposal for a regulation
Recital 11

Text proposed by the Commission

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

Amendment

(11) The definition of online search engine used in this Regulation should be \textit{broader than} the definition used in Directive (EU) 2016/1148 of the European Parliament and of the Council\textsuperscript{21} \textit{in order to ensure technology-neutrality and recognise the variety of search services.}


Amendment 10
Proposal for a regulation
Recital 12

Text proposed by the Commission

(12) \textit{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}

deleted

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.

Justification

Making coverage under the Regulation dependent on whether a business has “individually negotiated” its terms of service (based on an “overall assessment” of the contract) would expose businesses to substantial uncertainty about when they may be protected, and how much they may be able to negotiate without jeopardising their important rights. The Regulation risks creating a situation whereby the more a business user negotiates with a platform, the more it is deprived of the minimum rights recognised by it. To avoid losing protection by the proposed Regulation, hotels – large or small – would then be faced with an incentive not to seek better contractual terms in negotiations with online platforms.

Amendment 11

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

Amendment

(15) In order to protect business users and provide legal certainty for all sides, 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,
erga omnes and ex tunc. deemed to have never existed with effects erga omnes and ex tunc.

Amendment 12

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 2018/33422. 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 apply restriction or sanctions to business users such as suspension or termination of 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 and consumers concerned, The business user concerned should be immediately informed of the decision and receive the reasons thereof. If the decision is based on notifications by third parties, these notifications should be sufficiently precise and adequately substantiated to enable the hosting provider to take an informed and diligent decision. Providers should therefore be required to pass on the contents of such notifications to the business user in order to allow them to refute obviously wrongful notices. 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 2018/33422. 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. *As providers of intermediation services may work with additional distribution channels or affiliate programs, transparency towards business users should be ensured in that regard. Business users should have the right to make adjustments on channels where their offers are traded.*

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Amendment 13

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

*Amendment*

(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 characteristics of the actual goods or services offered by the business user, and their relevance to the consumers of the specific online intermediation services. The consumer should also be clearly and unequivocally informed, by means of an explicit or written statement, when a business user has influenced the ranking against remuneration.

Amendment 14
Proposal for a regulation
Recital 18 a (new)

Text proposed by the Commission

Amendment

(18 a) In order to be more accountable for the compliance with the provisions related to rankings, providers of online intermediation services and online search engines should appoint a person responsible for the algorithms and rankings applied by the provider. This should facilitate the smooth implementation of the provisions of the Regulation, and increasing certainty around rankings.

Amendment 15
Proposal for a regulation
Recital 19

Text proposed by the Commission

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.

Amendment 16
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

*(Amendment)*

(20) The ability to access and use **verifiable** data, including personal data, can enable important value creation in the online platform economy. Accordingly, it
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.


Amendment 17

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 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

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. Such restrictions should be limited, as they deprive business users from exercising their entrepreneurial freedom to set the conditions of sale of their own products and services, and may also harm consumers by preventing them
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.

Access to a wider choice. Upon request from business users or another provider of online interdiction services, or on its own initiative, the Commission should actively and promptly assess the legality of such restrictions against Union law. Business users should be granted full control over their own intellectual property rights. Providers of online intermediated services should make use of these rights only upon the explicit consent of the business user. The terms of use of such rights should be adhered to.

Amendment 18
Proposal for a regulation
Recital 22

Text proposed by the Commission

(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.

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 and degree of difficulty 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.
Amendment 19
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 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/EC25.

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 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/EC25.


Amendment 20
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. However, that proportion should never be less than half of those costs. In exceptional cases where business users are large undertakings benefitting from their own online trading channel and where the mediator identifies an apparent abuse of the mediation procedure at the detriment of the providers of online intermediation services, business users should bear a higher proportion of the costs.

Amendment 21

Proposal for a regulation
Recital 28

Text proposed by the Commission

(28) Codes of conduct, drawn up either by the service providers concerned or by organisations or associations representing them, can contribute to the proper application of this Regulation and should therefore be encouraged. When drawing up such codes of conduct, in consultation with all relevant stakeholders, account should be taken of the specific features of the sectors concerned as well as of the specific characteristics of micro, small and medium-sized enterprises.

Amendment

(28) Codes of conduct, drawn up either by the service providers concerned or by organisations or associations representing them, can contribute to the proper application of this Regulation and should therefore be encouraged. When drawing up such codes of conduct, in consultation with all relevant stakeholders, account should be taken of the specific features of the sectors concerned as well as of the specific characteristics of micro, small and medium-sized enterprises. The Commission should assess the compliance of the codes of conduct with Union law.

Amendment 22

Proposal for a regulation
Recital 28 a (new)
(28 a) Considers that Union legislation should be guided by the concept of "as little as possible and as much as necessary", which means necessity of rules fitting for digital age and open and technologically neutral enough to accommodate future developments; Appreciates the Commission's initiative to analyse the role of platforms in the Digital Economy, ensuring a comprehensive and similar approach to framework across the digital market; considers that "a one size fits all" solution may have a chilling effect on innovation and put European companies at a competitive disadvantage in the global economy;

Amendment 23
Proposal for a regulation
Recital 31

Text proposed by the Commission

(31) As the objective of this Regulation, namely to ensure a fair, predictable, sustainable and trusted online business environment within the internal market, cannot be sufficiently achieved by the Member States, but can rather, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.

Amendment

Proposal for a regulation
Article 1 – paragraph 1

(31) As the objective of this Regulation, namely to ensure a clear, fair, predictable, sustainable and trusted online business environment within the internal market, cannot be sufficiently achieved by the Member States, but can rather, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary to achieve that objective.
Text proposed by the Commission

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.

Amendment

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.

Amendment 25

Proposal for a regulation
Article 1 – paragraph 1 a (new)

Text proposed by the Commission

1 a. Member States shall not maintain or introduce in their national law provisions on the subject-matters covered by this Regulation and diverging from the provision laid down in this Regulation.

Amendment

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.

Amendment 26

Proposal for a regulation
Article 1 – paragraph 2

Text proposed by the Commission

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

2. This Regulation shall apply to online search engines and online intermediation services provided, or offered to be provided, to business users and corporate website users, respectively, that have their place of establishment or are actively operating in the Union, that target consumers located 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 27

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 promotes goods or services to consumers for purposes relating to its trade, business, craft or profession; including in the field of transport and individuals working or providing services by personally providing work via online intermediation services;

Amendment 28

Proposal for a regulation
Article 2 – paragraph 1 – point 2 – point b

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;

Amendment

(b) they allow business users to offer or promote 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;

Amendment 29

Proposal for a regulation
Article 2 – paragraph 1 – point 2 – point c

Text proposed by the Commission

(c) they are provided to business users on the basis of contractual relationships between, on the one hand, the provider of those services and, on the other hand, both those business users and the consumers to which those business users offer goods or services;

Amendment

(c) they are provided to business users on the basis of contractual relationships between, on the one hand, the provider of those services and, on the other hand, both those business users and the consumers to which those business users offer or promote goods or services;
Amendment 30
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 or interface or mobile applications that allows users to perform searches of web content, in a particular language on the basis of a query in the form of a keyword, phrase or other input in many options, and returns result in which information related to the query can be found;

Amendment 31
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 an online interface, meaning any software, including a website or a part thereof and applications, including mobile applications, to offer or promote goods or services to consumers for purposes relating to its trade, business, craft or profession;

Amendment 32
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

**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 for consumers by online search engines, as presented, organised or
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; 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 33

Proposal for a regulation
Article 2 – paragraph 1 – point 10 a (new)

Text proposed by the Commission

(10 a) 'ancillary goods and services’ means goods or services that are offered complementary to the primary product offered by the business user.

Amendment 34

Proposal for a regulation
Article 3 – paragraph 1 – point a

Text proposed by the Commission

(a) are drafted in clear and unambiguous language;

Amendment

(a) are drafted in clear language;

Amendment 35

Proposal for a regulation
Article 3 – paragraph 1 – point c

Text proposed by the Commission

(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

(c) set out the objective, non-discriminatory, fair and reasonable grounds, consistent with those terms and conditions, for decisions to impose sanctions such as restrict, suspend or terminate, in whole or in part, the provision of their online intermediation services to business users.
**Amendment 36**

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

*Text proposed by the Commission*

- (c a) contain provision referring to the obligation of business users that information provided on the platform is accurate and ensuring a correct evaluation by the consumers of the quality, technical performances, price and other specific characteristics of the goods or services offered and legal and fair terms and conditions especially regarding payment.

**Amendment 37**

Proposal for a regulation  
Article 3 – paragraph 3 – subparagraph 1

*Text proposed by the Commission*

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

**Amendment 38**

Proposal for a regulation  
Article 3 – paragraph 3 – subparagraph 2

*Text proposed by the Commission*

- The envisaged modifications shall not be implemented before the expiry of a notice

*Amendment*

- 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.

Amendment 39

Proposal for a regulation
Article 3 – paragraph 5

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 40

Proposal for a regulation
Article 3 – paragraph 5 a (new)

5 a. The fee a provider of online intermediation service charges to the business user for its online intermediation services shall be proportionate and negotiated between the two parties involved.

Amendment 41

Proposal for a regulation
Article 4 – title
Text proposed by the Commission

Suspension and termination

Amendment

Suspension, delisting and termination

Amendment 42

Proposal for a regulation
Article 4 – paragraph 1

Text proposed by the Commission

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.

Amendment

1. Where a provider of online intermediation services decides to apply sanctions, such as suspend, de-list or terminate, in whole or in part, the provision of its online intermediation services to a given business user, it shall inform and provide the business user concerned, without undue delay, with a clear and coherent statement of reasons for that decision.

Amendment 43

Proposal for a regulation
Article 4 – paragraph 2

Text proposed by the Commission

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).

Amendment

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 grounds for that decision referred to in Article 3(1)(c). Upon request by the business user, the provider of the online intermediation service shall provide the specific facts or circumstances that led to that decision including the third party notification where the suspension or termination results from the said notification. Termination and suspension shall be preceded by a notification and opportunity
to clarify or re-establish compliance.

Amendment 44

Proposal for a regulation
Article 5 – paragraph 1 – subparagraph 1

Text proposed by the Commission

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.

Amendment

Providers of online intermediation services shall set out clearly and unambiguously in their terms and conditions the main parameters determining ranking and the reasons for their relative importance as opposed to other parameters. Any changes to the parameters determining ranking shall be communicated to the business users in a timely manner and in clear and unambiguous language. Parameters determining ranking shall be applied in a non-discriminatory manner to business users. Without prejudice to Article 3 (3), any changes to the parameters determining ranking shall be communicated to the business users in a timely manner and in clear, plain language.

Amendment 45

Proposal for a regulation
Article 5 – paragraph 2

Text proposed by the Commission

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.

Amendment

2. Providers of online search engines shall set out for corporate website users the main parameters determining ranking in the general search results pages, by providing an easily and publicly available description, drafted in clear, plain and intelligible 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 substantive manner and having a
negative result. Where a provider of an online search engine has altered the ranking order or delisted a particular website following a third party notification, the provider shall offer the business user the possibility to inspect the content of the notice.

Amendment 46

Proposal for a regulation
Article 5 – paragraph 4

Text proposed by the Commission

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.

Amendment

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 nor any information that would be likely to facilitate the manipulation of results or the deception of consumers.

Amendment 47

Proposal for a regulation
Article 5 – paragraph 4 a (new)

Text proposed by the Commission

4 a. Business users shall share with providers of online intermediation services an accurate description of the characteristics of the goods and services offered to consumers. Any adverse effect on the ranking of a business users' goods and services resulted from the incomplete or inaccurate information provided by that business users shall not be imputed to the online intermediation service provider.

Amendment

4 a. Business users shall share with providers of online intermediation services an accurate description of the characteristics of the goods and services offered to consumers. Any adverse effect on the ranking of a business users' goods and services resulted from the incomplete or inaccurate information provided by that business users shall not be imputed to the online intermediation service provider.
Article 5 – paragraph 4 b (new)

Text proposed by the Commission

4 b. Providers of online search engines and providers of online intermediation services shall appoint an individual responsible for policy related to rankings within the provider.

Amendment 49

Proposal for a regulation
Article 5 a (new)

Text proposed by the Commission

Article 5 a

Ancillary goods and services

1. Where ancillary goods and services are offered by providers of online intermediation services, either by the providers themselves, third parties or the business users, the providers shall set out in their terms and conditions a description of the ancillary goods and services.

2. In cases where both the providers or third parties and the business users offer ancillary goods and services, the description in paragraph 1 should state clearly whether the ancillary goods and services provided by the business user will be offered to the customer. Providers of online intermediation services should state clearly and visibly to the customer who provides the respective ancillary goods or services and under which terms and conditions.”

Amendment 50

Proposal for a regulation
Article 6 – paragraph 1

Text proposed by the Commission

Amendment
1. Providers of online intermediation services shall include in their terms and conditions a description of any material 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 51**

*Proposal for a regulation*
*Article 6 – paragraph 2 – point b*

*Text proposed by the Commission*

(b) ranking;

*Amendment*

(b) ranking and default settings;

**Amendment 52**

*Proposal for a regulation*
*Article 6 – paragraph 2 – point c*

*Text proposed by the Commission*

(c) any direct or indirect remuneration charged for the use of the online intermediation services concerned;

*Amendment*

(c) any direct or indirect remuneration charged for the use of the online intermediation services or online search engines concerned;

**Amendment 53**

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

*Text proposed by the Commission*

*Amendment*

*Article 6 a*

Differentiated treatment of ancillary goods and services

Where applicable, 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, ancillary 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 54

Proposal for a regulation
Article 7 – paragraph 1

Text proposed by the Commission

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.

Amendment

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

Amendment 55

Proposal for a regulation
Article 7 – paragraph 2 – point a

Text proposed by the Commission

(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

(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 and if that data is provided to third parties:
Amendment 56
Proposal for a regulation
Article 7 – paragraph 2 – point b

Text proposed by the Commission

(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;

Amendment

(b) **under which conditions** 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;

Amendment 57
Proposal for a regulation
Article 7 – paragraph 2 – point c

Text proposed by the Commission

(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.

Amendment

(c) **under which conditions**, 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.

Amendment 58
Proposal for a regulation
Article 7 – paragraph 2 a (new)

Text proposed by the Commission

2 a. **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.

Amendment 59
Proposal for a regulation
Article 7 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

2b. Providers of online intermediated services, facilitating the contracting between the business user and the consumer, may transmit the relevant contact data of the consumer to the business user, unless the consumer disagrees.

Amendment 60
Proposal for a regulation
Article 7 – paragraph 2 c (new)

Text proposed by the Commission

Amendment

2c. 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 service are accurate and that this data are adequate to allow them to respect their legal obligations, in particular towards consumers.

Amendment 61
Proposal for a regulation
Article 8 – title

Text proposed by the Commission

Amendment

Restrictions to offer different conditions through other means

Restrictions to offer different conditions
Amendment 62
Proposal for a regulation
Article 8 – paragraph 1

Text proposed by the Commission

1. **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.**

Amendment

1. Providers of online intermediation services **shall not** restrict the ability of business users to offer **different conditions to consumers for obtaining** the goods and services **at issue** through other means than those services.

Amendment 63
Proposal for a regulation
Article 8 – paragraph 1 a (new)

Text proposed by the Commission

1 a. Providers of online intermediation services **shall provide, at the request of the business user**, full disclosure of all platforms and websites which are owned and operated by the intermediary where a business user's products or services are listed.

Amendment

2. Providers of online intermediation services **shall not enforce on business**

Amendment 64
Proposal for a regulation
Article 8 – paragraph 2

Text proposed by the Commission

2. **The obligation set out in paragraph 1 shall not affect any**

Amendment

2. Providers of online intermediation services **shall not enforce on business**
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.

users to give up fully or partly the control
over their intellectual property rights,
including their registered trademarks and
brand names.

Amendment 65
Proposal for a regulation
Article 9 – paragraph 2 – point b

Text proposed by the Commission
(b) process complaints swiftly and
effectively, taking into account the
importance and complexity of the issue
raised;

Amendment
(b) process complaints swiftly and
effectively, within 30 days at the latest,
taking into account the importance and
complexity of the issue raised;

Amendment 66
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
the outcome of the internal complaint-
handling process and drafted in clear and
unambiguous language. A first response to
any complaint should come no later than
14 days.

Amendment 67
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

Amendment
Providers of online intermediation services
shall make available to the public
information on the general functioning and
effectiveness of their internal complaint-
handling system and ensure that it is
internal complaint-handling system.

readily accessible for business users.

Amendment 68
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 needed to process the complaints and the decision taken on the complaints.

Amendment

That information shall include the total number of complaints lodged, the main types of complaints, the nature of problems raised by business users and the average time period needed to process the complaints and the decision taken on the complaints.

Amendment 69
Proposal for a regulation
Article 10 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Providers of online intermediation services shall 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.

Amendment

Independent mediation shall be voluntary and used only after redress options within the internal complaint-handling system have been exhausted. Providers of online intermediation services may 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, which could not be resolved by means of the internal complaint-handling system referred to in Article 9.

Amendment 70
Proposal for a regulation
Article 10 – paragraph 3
3. Providers of online intermediation 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.

Amendment

3. Providers of online intermediation services and business users shall engage in good faith in any attempt to reach an agreement through the mediation of any of the mediators which have been identified in accordance with paragraph 1, with a view to reaching an agreement on the settlement of the dispute.

Amendment 71

Proposal for a regulation
Article 10 – paragraph 4

Text proposed by the Commission

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.

Amendment

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.

Amendment 72

Proposal for a regulation
Article 10 – paragraph 5

Text proposed by the Commission

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

Amendment

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.

Amendment 73
Proposal for a regulation
Article 10 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5 a. 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 or that have binding equivalent conflict resolution mechanisms agreed upon in their respective franchise contracts or cooperation statutes.

Amendment 74
Proposal for a regulation
Article 10 – paragraph 5 b (new)

Text proposed by the Commission

Amendment

5 b. Providers of online intermediation services shall publish information annually to the general public in an easily accessible format specifying the number of cases undertaken, the nature of the complaints, and the results of those complaints.

Amendment 75
Proposal for a regulation
Article 12 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1 a. Member States shall ensure that their relevant public bodies or other authorities set up a registry of unlawful acts which have been subject to injunction
orders before national courts in order to provide a basis for best practice and information to other Member State public bodies or other authorities.

Amendment 76

Proposal for a regulation
Article 12 – paragraph 2 – subparagraph 1 – point a a (new)

Text proposed by the Commission

Amendment

(aa) they disclose fully and publicly information on the membership, governance structure, personnel and finances.

Amendment 77

Proposal for a regulation
Article 12 – paragraph 2 – subparagraph 1 – point b

Text proposed by the Commission

Amendment

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

Amendment 78

Proposal for a regulation
Article 12 – paragraph 2 – subparagraph 1 – point b a (new)

Text proposed by the Commission

Amendment

(b a) they disclose fully and publicly-available information about their membership and structure;

Amendment 79

Proposal for a regulation
Article 12 – paragraph 2 – subparagraph 1 – point c

Text proposed by the Commission

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

Amendment

(c) they are of a non-profit making character and are transparent for bringing a claim.

Amendment 80

Proposal for a regulation

Article 12 – paragraph 3

Text proposed by the Commission

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.

Amendment

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 the courts from the habitual residence of the business users or corporate website users or before courts from the place where the harmful event occurred or may occur, 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 and search engines with the relevant requirements laid down in this Regulation.

Amendment 81

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

Amendment

1. The Commission shall encourage and monitor the drawing up of codes of conduct by providers of online intermediation services and by organisations and associations representing them, including the consultation and involvement of SME organisations and platform workers' representatives regarding the content of such codes, intended to contribute to the proper
micro, small and medium-sized enterprises. 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 82

Proposal for a regulation
Article 13 – paragraph 2

Text proposed by the Commission

2. The Commission shall encourage
the drawing up of codes of conduct by
providers of online search engines and by
organisations and associations
representing them, intended to contribute
to the proper application of Article 5(2)
and (3).

Amendment

2. Providers of online intermediation
services or organisations within the
meaning of this Regulation are
encouraged to draw up codes of conduct,
that are intended to contribute to the
proper application of Article 5(2) and (3).

Amendment 83

Proposal for a regulation
Article 13 – paragraph 2 a (new)

Text proposed by the Commission

2 a. The Commission shall verify the
compliance of the codes of conduct with
Union law.

Amendment

Amendment 84

Proposal for a regulation
Article 14 – paragraph 1

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.

Amendment

1. By [date: two 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.

EN
Justification

3 years in the online market is an eternity, thus it is recommended to reduce the time to 2 years in order to be able more timely response to emerging market needs.

Amendment 85

Proposal for a regulation
Article 14 – paragraph 2

Text proposed by the Commission

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

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. As part of this evaluation, an assessment shall also be made of whether this Regulation had any impact in the transport sector, in particular towards the achievement of the Single European Transport Area.

Amendment 86

Proposal for a regulation
Article 14 – paragraph 4

Text proposed by the Commission

4. In carrying out the evaluation of this Regulation, the Commission shall take into account the opinions and reports presented to it by the group of experts for the Observatory on the Online Platform Economy established in accordance with the Commission Decision C(2018)2393. It shall also take into account the content and functioning of any codes of conduct referred to in Article 13, where appropriate.

Amendment

4. In carrying out the evaluation of this Regulation, the Commission shall take into account the opinions and reports presented to it by the group of experts for the Observatory on the Online Platform Economy established in accordance with the Commission Decision C(2018)2393. It shall also take into account the content and functioning of any codes of conduct referred to in Article 13, where appropriate. Following the evaluation, the Commission shall, where necessary,
**Amendment 87**

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

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<thead>
<tr>
<th>Text proposed by the Commission</th>
<th>Amendment</th>
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<tr>
<td>2. It shall apply from [date: six months following the day of its publication].</td>
<td>2. It shall apply from [date: twelve months following the day of its publication].</td>
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## PROCEDURE – COMMITTEE ASKED FOR OPINION

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<thead>
<tr>
<th>Title</th>
<th>Promoting fairness and transparency for business users of online intermediation services</th>
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<tbody>
<tr>
<td>Committee responsible</td>
<td>IMCO</td>
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<tr>
<td>Date announced in plenary</td>
<td>28.5.2018</td>
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<tr>
<td>Opinion by</td>
<td>TRAN</td>
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<td>Date announced in plenary</td>
<td>28.5.2018</td>
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<tr>
<td>Rapporteur</td>
<td>Claudia Ţapardel</td>
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<tr>
<td>Date appointed</td>
<td>10.8.2018</td>
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<tr>
<td>Discussed in committee</td>
<td>9.10.2018</td>
</tr>
<tr>
<td>Date adopted</td>
<td>22.11.2018</td>
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<td>Result of final vote</td>
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<td>-: 2</td>
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<td>0: 0</td>
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<td>Members present for the final vote</td>
<td>Daniela Aiuto, Lucy Anderson, Marie-Christine Arnautu, Inês Ayala Sender, Georges Bach, Deirdre Clune, Michael Cramer, Luis de Grandes Pascual, Andor Deli, Isabella De Monte, Jacqueline Foster, Innocenzo Leontini, Peter Lundgren, Elżbieta Katarzyna Łukacijewska, Marian-Jean Marinescu, Gesine Meissner, Markus Pieper, Gabriele Preuß, Christine Revault d’Allonnes Bonnefoy, Massimiliano Salini, Claudia Ţapardel, Keith Taylor, Pavel Telička, István Ujhelyi, Marita Ulvskog, Wim van de Camp, Janusz Zemke, Roberts Zīle</td>
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<tr>
<td>Substitutes present for the final vote</td>
<td>Jakop Dalunde, Mark Demesmaeker, Michael Gahler, Franck Proust, Anders Sellström, Henna Virkkunen</td>
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<tr>
<td>Substitutes under Rule 200(2) present for the final vote</td>
<td>Clare Moody, Flavio Zanonato</td>
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### FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

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<tr>
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<tr>
<td>ALDE</td>
<td>Gesine Meissner, Pavel Telička</td>
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<td>Daniela Aiuto</td>
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<td>Marie-Christine Arnautu</td>
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<td>S&amp;D</td>
<td>Lucy Anderson, Inés Ayala Sender, Isabella De Monte, Clare Moody, Gabriele Preuß, Christine Revault d’Allonnes Bonnefoy, István Ujhelyi, Marita Ulvskog, Flavio Zanonato, Janusz Zemke, Claudia Țapardel</td>
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<td>VERTS/ALE</td>
<td>Michael Cramer, Jakop Dalunde, Keith Taylor</td>
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| 2 | - |
| ECR | Jacqueline Foster, Peter Lundgren |

| 0 | 0 |

Key to symbols:
- + : in favour
- - : against
- 0 : abstention
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<th><strong>PROCEDURE – COMMITTEE RESPONSIBLE</strong></th>
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<td><strong>Date submitted to Parliament</strong></td>
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<td><strong>Committee responsible</strong></td>
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<td><strong>Committees asked for opinions</strong></td>
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<td><strong>Associated committees</strong></td>
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<td><strong>Discussed in committee</strong></td>
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<td><strong>Date adopted</strong></td>
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<td><strong>Result of final vote</strong></td>
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<td><strong>Substitutes present for the final vote</strong></td>
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