



**2018/0112(COD)**

27.9.2018

## **DRAFT OPINION**

of the Committee on Legal Affairs

for the Committee on the Internal Market and Consumer Protection

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

Rapporteur for opinion (\*): Francis Zammit Dimech

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

PA\_Legam

## SHORT JUSTIFICATION

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

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

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

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

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

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

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

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

## AMENDMENTS

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

### Amendment 1

#### Proposal for a regulation Recital 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*

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Or. en

### Amendment 2

#### Proposal for a regulation Recital 7

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

(7) Since online intermediation

##### *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. 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.

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Or. en

### Amendment 3

#### 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

*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.

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

Or. en

## Amendment 4

### Proposal for a regulation Recital 11

#### *Text proposed by the Commission*

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

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<sup>21</sup> Directive (EU) 2016/1148 of the European Parliament and of the Council concerning measures for a high common level of security of network and

#### *Amendment*

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

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<sup>21</sup> Directive (EU) 2016/1148 of the European Parliament and of the Council concerning measures for a high common level of security of network and

information systems across the Union (OJ L 194, 19.7.2016, p. 1).

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Or. en

## **Amendment 5**

### **Proposal for a regulation Recital 14 a (new)**

*Text proposed by the Commission*

*Amendment*

***(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 foreseen in specific terms by the intermediary service provider. In such cases, intermediary service providers are exempted from the 15 days notice period for application of the new terms and conditions.***

Or. en

## **Amendment 6**

### **Proposal for a regulation Recital 15**

*Text proposed by the Commission*

*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

(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.*

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Or. en

## Amendment 7

### 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

#### *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



content, in line with Commission Recommendation (EU) No 2018/334<sup>22</sup>. The statement of reasons should identify the objective ground or grounds for the decision, based on the grounds that the provider had set out in advance in its terms and conditions, and refer in a proportionate manner to the relevant specific circumstances that led to that decision.

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

statement of reasons should allow business users to ascertain whether there is scope to challenge the decision, thereby improving the possibilities for business users to seek effective redress where necessary. In addition, requiring a statement of reasons should help to prevent or remedy any unintended removal of online content provided by business users which the provider incorrectly considers to be illegal content, in line with Commission Recommendation (EU) No 2018/334<sup>22</sup>. The statement of reasons should identify the objective ground or grounds for the decision, based on the grounds that the provider had set out in advance in its terms and conditions, and refer in a proportionate manner to the relevant specific circumstances that led to that decision.

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

Or. en

## Amendment 8

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

*Text proposed by the Commission*

*Amendment*

***(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.***

Or. en

## Amendment 9

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

*Text proposed by the Commission*

*Amendment*

***(19 a) 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.***

Or. en

## Amendment 10

### Proposal for a regulation Recital 20

*Text proposed by the Commission*

*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.<sup>24</sup>

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***This Regulation should not require online intermediation service providers to share***

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

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

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

Or. en

## Amendment 11

### 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 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.

Or. en

## Amendment 12

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

*Text proposed by the Commission*

*Amendment*

***(21 a) 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 explicit consent of the business user. The terms of use of such rights should be adhered to.***

Or. en

## Amendment 13

### Proposal for a regulation Article 1 – paragraph 2

*Text proposed by the Commission*

*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.

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.

Or. en

## Amendment 14

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

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*Text proposed by the Commission*

*Amendment*

**(1) This Regulation is without prejudice to sectoral measures taken at Union or national level, in compliance with Union law.**

Or. en

## **Amendment 15**

### **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) ***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.***

Or. en

## **Amendment 16**

### **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 the provider of those services and business users ***who*** offer goods ***and*** services ***to consumers;***

Or. en

## Amendment 17

### 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 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;

Or. en

## Amendment 18

### 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 and are unilaterally determined by the provider of online intermediation services.

Or. en

## Amendment 19

### 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 grounds for decisions to 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.***

Or. en

## Amendment 20

### Proposal for a regulation

#### Article 3 – paragraph 1 – point c a (new)

*Text proposed by the Commission*

*Amendment*

***(c a) Providers of online intermediation services should inform business users on their additional distribution channels and potential affiliate programmes that they are going to serve with the offers of business users. Business users should be granted the right to ask for their removal from such additional distribution channels.***

Or. en

## Amendment 21

### 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 to the business users concerned any *material* modification of their terms and conditions *which are to affect them in a non-negligible manner*.

Or. en

**Amendment 22**

**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 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 **7** days from the date on which the provider of online intermediation services notifies the business users concerned about the envisaged modifications.

Or. en

**Amendment 23**

**Proposal for a regulation**

**Article 3 – paragraph 3 – subparagraph 3**

*Text proposed by the Commission*

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

*Amendment*

The business user concerned may by means of a written statement waive the notice period referred to in the second subparagraph. *During the 7 days period, online intermediation service providers may require business users to accept the*



*modified terms and conditions if they intend to submit new goods, content or services to the online intermediation service.*

Or. en

## Amendment 24

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

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

## Amendment 25

### 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. 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. ***Paragraph 3 shall not apply if the terms and conditions have been modified in order to protect the legitimate interest of the consumers or the integrity of the platform.***

Or. en

## Amendment 26

### 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, 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.***

Or. en

## Amendment 27

### 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 ***information that would be likely to facilitate either the manipulation of results or the deception of consumers.***

Or. en

## Amendment 28

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

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

Or. en

## **Amendment 29**

### **Proposal for a regulation**

#### **Article 6 – paragraph 2 – introductory part**

*Text proposed by the Commission*

*Amendment*

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:

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:

Or. en

## **Amendment 30**

### **Proposal for a regulation**

#### **Article 6 – paragraph 2 – point c**

*Text proposed by the Commission*

*Amendment*

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

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

*engine services* concerned;

Or. en

## Amendment 31

### Proposal for a regulation

#### Article 7 – paragraph 2 – point c a (new)

*Text proposed by the Commission*

*Amendment*

***(c a) Business users shall ensure that the data of their goods and services, in particular all element 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.***

Or. en

## Amendment 32

### Proposal for a regulation

#### Article 8 – paragraph 2

*Text proposed by the Commission*

*Amendment*

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.

Or. en

## Amendment 33

### 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*** easily available ***description of the main types of problems businesses may face when using the online intermediation service.***

Or. en

## Amendment 34

### 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.

Or. en

## Amendment 35

### 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,

##### *Amendment*

Providers of online intermediation services ***should 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

including complaints that could not be resolved by means of the internal complaint-handling system referred to in Article 9.

services concerned, including complaints that could not be resolved by means of the internal complaint-handling system referred to in Article 9.

Or. en

## Amendment 36

### 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. **The parties involved in the mediation** 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 ***within a time period of no longer than 25 days from commencement of the mediation, unless fulfilling this deadline would constitute an unreasonable burden taking into account the complexity of the dispute. In this case, an agreement should be reached within a time period of no longer than 90 days.***

Or. en

## Amendment 37

### 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

*Amendment*

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

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.***

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 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.***

Or. en

## Amendment 38

### 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*

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. ***Initiation of judicial proceedings is not conditional on the initiation of mediation process.***

Or. en

## Amendment 39

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

#### *Text proposed by the Commission*

#### *Amendment*

***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.*

Or. en

## Amendment 40

### Proposal for a regulation Article 12 – paragraph 1

*Text proposed by the Commission*

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.

*Amendment*

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 **information, non-discrimination and access to data** requirements laid down in this Regulation.

Or. en

## Amendment 41

### 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,

*Amendment*

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:

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

Or. en

## Amendment 42

### Proposal for a regulation

#### Article 12 – paragraph 3 a (new)

*Text proposed by the Commission*

*Amendment*

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

Or. en

## Amendment 43

### Proposal for a regulation

#### Article 14 – paragraph 1

*Text proposed by the Commission*

*Amendment*

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.

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.**

Or. en

## Amendment 44

### 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 review shall at least include the assessment of:**

- i. the effectiveness of this Regulation, including the thresholds defined in paragraphs 4 to 6 of Article 1;**
- ii. the effectiveness of established codes of conduct to improve fairness and transparency;**
- iii. 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;**
- iv. possible impacts of potentially harmful practices on consumers;**
- v. the need to include operating systems in the scope of this Regulation;**
- vi. the need to establish a non-exhaustive list of unfair practices.**

Or. en