



2018/0112(COD)

23.11.2018

OPINION

of the Committee on Industry, Research and Energy

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: Anna Záborská

PA_Legam

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

Recital 2

(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.

(2) Online intermediation services can be crucial for the commercial success of undertakings who use such services to reach consumers. ***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.*** 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 ***self-employed***, micro, small and medium-sized enterprises, on those services in order for them to reach consumers. Given that increasing dependence ***which may affect large businesses in addition to self-employed, micro, small and medium-sized enterprises***, 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 5

(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

(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

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.

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

Amendment

(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, 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

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.

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 *or businesses* located in the Union at least for part of the transaction. ***In accordance with Union law^{1a}, 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.

^{1a} ***Regulation (EC) No 44/2001 (Brussels I) and Regulation (EC) No 593/2008 (Rome I)***

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

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.

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

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 Council²¹.

²¹ 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).

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 Council²¹. ***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.***

²¹ 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).

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 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 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

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

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

Amendment

(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

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

(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.

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 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.

Amendment 13

Proposal for a regulation Recital 15 a (new)

Text proposed by the Commission

Amendment

(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

Text proposed by the Commission

Amendment

(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

(16) A provider of online intermediation services can have legitimate reasons to decide to ***sanction a given business user, for example by suspending, delisting or terminating*** the provision of its services, in whole or in part, 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.

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.

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. ***In case of 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 should be provided. Wherever possible, a proportionate and gradual system should be put in place, including prior and timely notification before taking measures that will result in severing the access of the consumers to the business.***

²² 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).

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

Amendment 15

Proposal for a regulation Recital 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

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 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

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

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 Council²³*** 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.

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 ranking parameters should be without prejudice to Directive (EU) 2016/943 of the European Parliament and of the Council, taking into account its provisions on lawful acquisition, use and disclosure.*** When complying with this requirement to disclose the main ranking parameters, the description given should at least be based on actual data on the relevance of the ranking parameters used.

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

Amendment 17

Proposal for a regulation Recital 18 a (new)

(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

(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

(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 engine*** 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

or services offered through those services.

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 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. *The data generated in the process of online interaction between online intermediation service or online search engine on the one hand, business user or corporate website on the other, and consumers should be accessible to business users, in aggregated form, in order to enable them to improve the quality of their services without prejudice to relevant Union law.* Processing of personal data should comply with Regulation (EU) 2016/679 of the

²⁴ 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).

²⁴ 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).

Amendment 20

Proposal for a regulation Recital 20 a (new)

Text proposed by the Commission

Amendment

(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

Amendment

(21) Providers of online intermediation services ***might in certain cases*** restrict in the terms and conditions the ability of business users to offer goods or services to consumers under more favourable conditions through other means than through those online intermediation services. ***In those cases, the providers concerned should set out the grounds for doing so, in particular with reference to the main economic, commercial or legal considerations for the restrictions. This transparency obligation should however***

(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.***

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 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 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

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 ***regularly review*** 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.

(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.***

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

Amendment 24

Proposal for a regulation Recital 24

(24) Mediation can offer providers of online intermediation services and their business users a means to resolve disputes

(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.***²⁵ 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.

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

(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.

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 26

Proposal for a regulation Recital 26

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.

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

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 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.

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.

Amendment 28

Proposal for a regulation Recital 28 a (new)

Text proposed by the Commission

Amendment

(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 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 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, **have targeted or directed sales of** 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

(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 ***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

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 goods or services ***with a view to receiving direct or indirect remuneration;***

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

Amendment

(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;

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

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 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

(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 37

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

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 considered voidable.***

Amendment 41

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:

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

Amendment

(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

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 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 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 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:

Amendment 48

Proposal for a regulation

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

Text proposed by the Commission

Amendment

(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

Amendment

(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

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.

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 shall keep that description up to date.

Amendment 51

Proposal for a regulation

Article 5 – paragraph 3 – introductory part

Text proposed by the Commission

Amendment

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:

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

Amendment

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

deleted

Amendment 53

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

Text proposed by the Commission

Amendment

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

(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

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.*

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

Amendment

-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 56

Proposal for a regulation

Article 6 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1 a. 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

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

2. The *descriptions* referred to in *paragraphs 1 and 1a* shall cover at least, where applicable, any differentiated treatment through specific measures taken

behaviour of, the provider of the online intermediation services relating to any of the following:

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

(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 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

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 **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

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. Through the description referred to in paragraph 1, providers of online intermediation services **or online search engines** shall **make publicly available the information**:

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

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, and if so, to which categories of such data and under what conditions;

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

(c) whether, in addition to point (b), a business user ***or corporate website*** 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 engine*** to all of the business users ***or corporate websites*** 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

Amendment

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

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.***

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 conditions through other means than through those services.

Amendment 68

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

Text proposed by the Commission

Amendment

Providers of online intermediation services

Providers of online intermediation services

shall provide for an internal system for handling the complaints of business users.

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

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;

Amendment 71

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 ***on the specific complaint in a timely*** manner, in clear and unambiguous language.

Amendment 72

Proposal for a regulation Article 9 – paragraph 3

Text proposed by the Commission

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

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.

Amendment 73

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 ***regularly review*** the functioning and effectiveness of their internal complaint-handling system.

Amendment 74

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

deleted

Amendment 75

Proposal for a regulation Article 9 – paragraph 5

Text proposed by the Commission

Amendment

5. The provisions of this Article shall not apply to providers of online intermediation services that are small enterprises within the meaning of Article 2 (2) of the Annex to Recommendation 2003/361/EC²⁹. *deleted*

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

Amendment 76

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

Text proposed by the Commission

Amendment

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.

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 disputes between the provider and the business user arising in relation to the provision of the online intermediation services concerned that could not be resolved by means of the internal complaint-handling system referred to in Article 9.

Amendment 77

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 78

**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***

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.

services shall in any case bear at least half of the total cost.

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 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

Amendment

**(a a) they are registered at the
Transparency Register;**

Amendment 83

Proposal for a regulation

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

Text proposed by the Commission

Amendment

**(a b) they publicly disclose information
about their membership, structure and
funding;**

Amendment 84

Proposal for a regulation

Article 12 – paragraph 3

Text proposed by the Commission

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.

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 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

Amendment

1. By [date: **three** years after the date of entry into force], and subsequently every

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.

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

Title	Promoting fairness and transparency for business users of online intermediation services
References	COM(2018)0238 – C8-0165/2018 – 2018/0112(COD)
Committee responsible Date announced in plenary	IMCO 28.5.2018
Opinion by Date announced in plenary	ITRE 28.5.2018
Associated committees - date announced in plenary	13.9.2018
Rapporteur Date appointed	Anna Záborská 30.5.2018
Discussed in committee	24.9.2018
Date adopted	21.11.2018
Result of final vote	+: 45 -: 7 0: 3
Members present for the final vote	Zigmantas Balčytis, Xabier Benito Ziluaga, David Borrelli, Jonathan Bullock, Jerzy Buzek, Edward Czesak, Jakop Dalunde, Pilar del Castillo Vera, Christian Ehler, Fredrick Federley, Adam Gierek, Igor Gräzin, Theresa Griffin, András Gyürk, Eva Kaili, Krišjānis Kariņš, Jeppe Kofod, Jaromír Kohlíček, Peter Kouroumbashev, Zdzisław Krasnodębski, Miapetra Kumpula-Natri, Christelle Lechevalier, Janusz Lewandowski, Paloma López Bermejo, Edouard Martin, Tilly Metz, Nadine Morano, Dan Nica, Angelika Niebler, Morten Helveg Petersen, Carolina Punset, Julia Reda, Massimiliano Salini, Algirdas Saudargas, Sven Schulze, Neoklis Sylikiotis, Dario Tamburrano, Patrizia Toia, Evžen Tošenovský, Vladimir Urutchev, Kathleen Van Brempt, Henna Virkkunen, Martina Werner, Lieve Wierinck, Hermann Winkler, Anna Záborská, Flavio Zanonato, Carlos Zorrinho
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

45	+
ALDE	Igor Gräzin, Morten Helveg Petersen, Carolina Punset, Pavel Telička, Lieve Wierinck
EFDD	Dario Tamburrano
ENF	Christelle Lechevalier
GUE/NGL	Jaromír Kohlíček
NI	David Borrelli
PPE	Pilar Ayuso, Jerzy Buzek, Pilar del Castillo Vera, Christian Ehler, András Gyürk, Gunnar Hökmark, Krišjānis Kariņš, Janusz Lewandowski, Nadine Morano, Angelika Niebler, Luděk Niedermayer, Massimiliano Salini, Algirdas Saudargas, Sven Schulze, Vladimir Urutchev, Henna Virkkunen, Hermann Winkler, Anna Záborská
S&D	Zigmantas Balčytis, Adam Gierek, Theresa Griffin, Eva Kaili, Jeppe Kofod, Peter Kouroumbashev, Miapetra Kumpula-Natri, Edouard Martin, Dan Nica, Patrizia Toia, Kathleen Van Brempt, Martina Werner, Flavio Zanonato, Carlos Zorrinho
VERTS/ALE	Jakop Dalunde, Tilly Metz, Julia Reda, Davor Škrlec

7	-
ALDE	Fredrick Federley
ECR	Amjad Bashir, Edward Czesak, John Flack, Zdzisław Krasnodębski, Evžen Tošenovský
EFDD	Jonathan Bullock

3	0
GUE/NGL	Xabier Benito Ziluaga, Paloma López Bermejo, Neoklis Sylikiotis

Key to symbols:

+ : in favour

- : against

0 : abstention