



**2018/0112(COD)**

7.9.2018

**\*\*\*I**

## **DRAFT REPORT**

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))

Committee on the Internal Market and Consumer Protection

Rapporteur: Christel Schaldemose

### ***Symbols for procedures***

- \* Consultation procedure
- \*\*\* Consent procedure
- \*\*\*I Ordinary legislative procedure (first reading)
- \*\*\*II Ordinary legislative procedure (second reading)
- \*\*\*III Ordinary legislative procedure (third reading)

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

### ***Amendments to a draft act***

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

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

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

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

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

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

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## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**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))**

**(Ordinary legislative procedure: first reading)**

*The European Parliament,*

- having regard to the Commission proposal to Parliament and the Council (COM(2018)0238),
  - having regard to Article 294(2) and Article 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0165/2018),
  - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
  - having regard to the opinion of the European Economic and Social Committee of XX X XXXX<sup>1</sup>,
  - having regard to the opinion of the Committee of the Regions<sup>2</sup>,
  - having regard to Rule 59 of its Rules of Procedure,
  - having regard to the report of the Committee on the Internal Market and Consumer Protection and the opinions of the Committee on Legal Affairs, the Committee on Industry, Research and Energy and the Committee on Transport and Tourism (A8-0000/2018),
1. Adopts its position at first reading hereinafter set out;
  2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
  3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

### **Amendment 1**

#### **Proposal for a regulation Recital 2**

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<sup>1</sup> OJ C...p...

<sup>2</sup> OJ C...p...

*Text proposed by the Commission*

(2) Online intermediation services can be crucial for the commercial success of undertakings who use such services to reach consumers. The growing intermediation of transactions through online intermediation services, fuelled by strong data-driven indirect network effects, lead to an increased dependence of such business users, including micro, small and medium-sized enterprises, on those services in order for them to reach consumers. Given that increasing dependence, the providers of those services often have superior bargaining power, which enables them to effectively behave unilaterally in a way that can be unfair and that can be harmful to the legitimate interests of their businesses users and, indirectly, also of consumers in the Union.

*Amendment*

(2) Online intermediation services can be crucial for the commercial success of undertakings who use such services to reach consumers. The growing intermediation of transactions through online intermediation services, fuelled by strong data-driven indirect network effects, lead to an increased dependence of such business users, including ***the self-employed and*** micro, small and medium-sized enterprises, on those services in order for them to reach consumers. Given that increasing dependence, ***which could also affect large businesses in addition to microenterprises and small and medium-sized enterprises***, the providers of those services often have superior bargaining power, 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 business users and, indirectly ***but significantly***, also ***to those*** of consumers in the Union.

Or. en

*Justification*

*The landscape of the modern online platform economy is a very diverse mixture of different sized companies. Platforms are not necessarily large business just as well as their business users are not all SMEs and vice versa. This regulation should take the diversity into account in order to reach the necessary level of balance.*

**Amendment 2**

**Proposal for a regulation**  
**Recital 3**

*Text proposed by the Commission*

(3) Similarly, online search engines can be important sources of Internet traffic for undertakings which offer goods or services to consumers through websites and can

*Amendment*

(3) Similarly, online search engines can be important sources of Internet traffic for undertakings which offer goods or services to consumers through websites and can

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

therefore significantly affect the commercial success of such corporate website users offering their goods or services online in the internal market. In this regard, the ranking of websites by providers of online search engines, including of those websites through which corporate website users offer their goods and services to consumers, has an important impact on consumer choice and the commercial success of those corporate website users. Even in the absence of a contractual relationship with corporate website users, providers of online search engines can therefore effectively behave unilaterally in a way that can be unfair and that can be harmful to the legitimate interests of corporate website users and, indirectly ***but significantly*** also ***to those*** of consumers in the Union. ***Consumers have embraced the online platform economy and a competitive, fair, and transparent online ecosystem is also essential for consumer welfare. Where dominant online intermediation services become gatekeepers of information, choice and prices, the consumers also suffer. Moreover, lack of transparency and legal uncertainty in the online platform economy, including in business to business relations, could diminish consumer trust in the online economy. This Regulation should improve the fairness and transparency for business users of online intermediation services. Improved rules that enhance consumer protection and facilitate consumer interaction with business users, thus rendering them fit for the online platform economy, are also urgently needed for the consumers making use of such services.***

Or. en

#### *Justification*

*While this Regulation is not in the field of consumer law, it should nevertheless pay attention to the effects that changes in business to business relationships will have on the end users of*

*the services - the consumers. Ensuring consumers' trust in the online platform economy is essential and will only become a more important objective over the coming years. Equally essential is creating a business environment that will maintain a high variety of choices at reasonable prices which is ultimately to the benefit of the consumer. In order to achieve these targets, legislation is needed to ensure a balanced and fair economy.*

### **Amendment 3**

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

#### **Recital 6**

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

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

##### *Amendment*

(6) A uniform and targeted set of mandatory rules should therefore be established at Union level to ensure a fair, predictable, sustainable and trusted online business environment within the internal market by ensuring, in particular, that the business users of online intermediation services are afforded appropriate transparency as well as effective redress possibilities throughout the Union. Those rules should also provide for appropriate 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. ***As the sector will be developing rapidly over the coming years, this Regulation should be supplemented by further and more prescriptive legislation where and if the transparency provisions established by this Regulation prove to be insufficient to handle future imbalances and unfair trading practices.***

Or. en

##### *Justification*

*It is important to note that even though this regulation will improve tremendously on the current situation more legislation will be needed in the coming years. Especially to tackle some of the many sector-specific imbalances that continuously are being highlighted. However, many of these imbalances are better addressed through sector-specific legislation*

*rather than horizontal legislation, thus underlining the possible need for more legislative initiatives over the coming years.*

#### **Amendment 4**

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

##### **Recital 9**

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

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

###### *Amendment*

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

Or. en

###### *Justification*

*In order to obtain more clarity and legal certainty, there is a need to clarify that the current definition should be understood to include voice assistant services. Such services will become increasingly popular, highlighting the need to stress that they are indeed covered by this Regulation.*

#### **Amendment 5**

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

##### **Recital 9 a (new)**

**(9 a) In certain cases, distinguishing between business users and non-business users of online intermediation services may be complicated. Such a distinction is important, since business users who offer goods or services to consumers should also be under stricter obligations towards consumers. In line with the Commission Proposal for a Directive of the European Parliament and of the Council amending Council Directive 93/13/EEC of 5 April 1993, Directive 98/6/EC of the European Parliament and of the Council, Directive 2005/29/EC of the European Parliament and of the Council and Directive 2011/83/EU of the European Parliament and of the Council as regards better enforcement and modernisation of EU consumer protection rules<sup>1a</sup>, it should not be in the discretion of the provider of an online intermediation service to distinguish whether a user is a business user or a non-business user. Rather, the users of online intermediation services should have the possibility to express whether they are business users or not.**

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<sup>1a</sup> COM(2018)0185 final.

Or. en

#### *Justification*

*Many users of platforms only use certain platforms once or twice to sell their goods and services which would not necessarily make them a business. Additionally, some business users might make few sales on one individual platform but may use many platforms to market their goods or services. These business users would not be recognised as such by the platforms who would not have a complete overview of the collective business activity of the business user, which in turn would make it difficult to distinguish them from non-business users. In order to fall under the safeguards offered by this Regulation, business users would have to declare to the platform that they are such. This would furthermore align this Regulation with the Commission proposal on the 'New deal for consumers'.*

## Amendment 6

### 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 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 Council<sup>21</sup>. ***The definition of an online search engine as a digital service that functions on the basis of a query on any subject in the form of a keyword, phrase or other input, and returns links, should be understood to also encompass voice searches.***

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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).

Or. en

### *Justification*

*In order to obtain more clarity and legal certainty, there is a need to clarify that the current definition should be understood to include voice assistant services. Such services will become increasingly popular, highlighting the need to stress that they are indeed covered by this Regulation*

## Amendment 7

### 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

*Amendment*

(12) In order to effectively protect business users, this Regulation should apply ***to*** the terms and conditions of a

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.*

contractual relationship.

Or. en

#### *Justification*

*The safeguards offered by this Regulation set a minimum that should be respected in business to business relationships within this sector. These minimum conditions should be respected in all terms and conditions. In sectors with significant imbalances of negotiation power between the two sides, business users could be coerced into individual negotiations which could diminish their rights under this Regulation and could make large parts of this Regulation redundant.*

#### **Amendment 8**

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

##### **Recital 13 a (new)**

*Text proposed by the Commission*

*Amendment*

*(13 a) To ensure not only transparency but also fairness in the relationships between providers of online intermediation services and their business users, the general terms and conditions should also be fair and proportionate taking into consideration the nature of the activities of the provider of the online intermediation service and the business user. Terms and conditions will not be considered to be fair and proportionate where, for example, those terms and conditions grossly deviate from good commercial conduct in the particular economic activity in which the online intermediation service operates, or go against the principles of good faith and fair dealing.*

*Justification*

*The title of this Regulation encompasses not only transparency, but also fairness. Thus, in order to ensure more fairness in the online platform economy, terms and conditions should live up to a certain degree of fairness to correct some of the apparent imbalances observed in some sectors.*

**Amendment 9****Proposal for a regulation****Recital 13 b (new)**

*Text proposed by the Commission*

*Amendment*

***(13 b) In order to ensure that business users have sufficient clarity regarding where, and to whom, their goods or services are being marketed, providers of online intermediation services should ensure transparency towards their business users regarding any additional channels or affiliate programs that the online intermediation service is using to market said goods or services.***

Or. en

*Justification*

*Business users have a right to know where their products are being marketed in order to keep control over their brand. It is therefore necessary that the platforms inform the business users of all the different channels they may use for marketing the goods or services of the business user.*

**Amendment 10****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

(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.

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 ***and conditions*** 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. ***Where the business user concerned submits new goods or services within the notice period, it should be considered to constitute clear affirmative action. The notice period should also not 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.

Or. en

### *Justification*

*In order not to have several different terms and conditions applying to the same business user, the submitting of new goods or services to a platform should constitute an affirmative action.*

## **Amendment 11**

### **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

#### *Amendment*

(16) A provider of online intermediation services can have legitimate reasons to decide to suspend, ***delist*** or terminate the provision of its services, in whole or in

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

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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).

part, to a given business user, including by delisting individual goods or services of a given business user or effectively removing search results. **It can also be under a legal obligation to remove certain content, or to suspend or terminate the provision of its services in whole or in part.** However, given that such decisions can significantly affect the interests of the business user concerned, they should be properly informed **in advance** of the **termination or suspension, except for in cases where a provider of online intermediation services is under a legal obligation to terminate its services immediately**. The statement of reasons should allow business users to ascertain whether there is scope to challenge the decision, thereby improving the possibilities for business users to seek effective redress where necessary. In addition, requiring a statement of reasons should help to prevent or remedy any unintended removal of online content provided by business users which the provider incorrectly considers to be illegal content, in line with Commission Recommendation (EU) No 2018/334<sup>22</sup>. The statement of reasons should identify the objective ground or grounds for the decision, based on the grounds that the provider had set out in advance in its terms and conditions, and refer in a proportionate manner to the relevant specific circumstances that led to that decision, **except in cases where a provider of online intermediation services is under a legal obligation not to disclose them.**

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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

## *Justification*

*In exceptional cases there may be legal obligations on platforms to suspend, delist or terminate its services to its business user. In these cases the notice period should not apply. In order to ensure for instance the secrecy of an ongoing investigation, the platforms should not be obliged disclose their reasons for suspending, delisting or terminating its services to the business user, if they were legally obliged not to do so.*

## **Amendment 12**

### **Proposal for a regulation**

#### **Recital 17**

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

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

##### *Amendment*

(17) The ranking of goods and services by the providers of online intermediation services has an important impact on consumer choice and, consequently, on the commercial success of the business users offering those goods and services to consumers. Providers of online intermediation services should therefore outline ***clearly and unambiguously*** 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. *It should also be ensured that the providers of online intermediation services provide the consumers with information about the parameters affecting the ranking. While the information offered to the consumer should be presented in a clear and comprehensible manner that is suitable to the needs of the consumer, the information offered to the business user and the consumer should, in any event, be similar enough to ensure that both parties who offer and those who search for a good or service are able to take informed decisions based on transparent searches.*

Or. en

#### *Justification*

*Transparent ranking is of key importance to both the business users and the consumers in the online platform economy. Transparency towards business users and corporate website users of platforms and search engines is only one part of the equation. Thus transparency should be also ensured for the consumers who use these online services, even if it is not the purpose of this Regulation to introduce the explicit legal requirement for platforms to do so. Such an obligation should be introduced under other Union law.*

### **Amendment 13**

#### **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

##### *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 ***clear and unambiguous*** description of the main parameters determining the ranking of all indexed websites, including those of

websites. In addition to the characteristics of the goods and services and their relevance for consumers, this description should in the case of online search engines also allow corporate website users to obtain an adequate understanding of whether, and if so how and to what extent, certain design characteristics of the website used, such as their optimisation for display on mobile telecommunications devices, is taken into account. In the absence of a contractual relationship between providers of online search engines and corporate website users, that description should be available to the public in an obvious and easily accessible location on the relevant online search engine. To ensure predictability for corporate website users, the description should also be kept up to date, including the possibility that any changes to the main parameters should be made easily identifiable. Whilst the providers are under no circumstances required to disclose any trade secrets as defined in Directive (EU) 2016/943 of the European Parliament and of the Council<sup>23</sup> when complying with this requirement to disclose the main ranking parameters, the description given should at least be based on actual data on the relevance of the ranking parameters used.

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

corporate website users as well as other websites. In addition to the characteristics of the goods and services and their relevance for consumers, this description should in the case of online search engines also allow corporate website users to obtain an adequate understanding of whether, and if so how and to what extent, certain design characteristics of the website used, such as their optimisation for display on mobile telecommunications devices, is taken into account. In the absence of a contractual relationship between providers of online search engines and corporate website users, that description should be available to the public in an obvious and easily accessible location on the relevant online search engine. To ensure predictability for corporate website users, the description should also be kept up to date, including the possibility that any changes to the main parameters should be made easily identifiable. Whilst the providers are under no circumstances required to disclose any trade secrets as defined in Directive (EU) 2016/943 of the European Parliament and of the Council<sup>23</sup> when complying with this requirement to disclose the main ranking parameters, the description given should at least be based on actual data on the relevance of the ranking parameters used. ***The existence of an up-to-date description of the main parameters would also benefit consumers.***

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

Or. en

## *Justification*

*In order to make the transparency provisions of this Regulation work as intended, the information given must be presented in a clear and unambiguously manner.*

### **Amendment 14**

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

##### **Recital 18 a (new)**

*Text proposed by the Commission*

*Amendment*

***(18 a) Parameters determining ranking should be applied in a non-discriminatory manner to business users, meaning that business users, that are in the same situation as regards, among others, the characteristics of their goods and services supplied, or the remuneration that they have paid, to influence their ranking, should be treated in the same manner with regards to the way they are ranked.***

Or. en

### **Amendment 15**

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

##### **Recital 19**

*Text proposed by the Commission*

*Amendment*

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

(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, 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

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

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

Or. en

#### *Justification*

*A widely used practice in many platforms is to preconfigure services of the same company as the default option for consumers. Consumers generally rely on default services out of comfort, due to a lack of knowledge, or because there are economic or technical barriers, and are unlikely to explicitly opt-out. This Regulation should be used in this regard to increase competitiveness in the online platform economy to the benefit of consumers by not allowing the pre-selection of default service without allowing for consumer choice.*

### **Amendment 16**

#### **Proposal for a regulation Recital 20**

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

(20) The ability to access and use data, including personal data, can enable important value creation in the online

##### *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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<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).

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

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

<sup>24a</sup> ***Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or***

*prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA*

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

Or. en

### *Justification*

*It is of paramount importance that this Regulation does not in any case alter the framework concerning the protection of personal data or the right for private life. It is therefore necessary to clarify that this Regulation not only does not affect the GDPR but all the legislation creating the framework for the protection of personal data.*

## **Amendment 17**

### **Proposal for a regulation Recital 20 a (new)**

*Text proposed by the Commission*

*Amendment*

*(20 a) The online intermediation service provider's access to data generated by the transactions of a business user may allow the online intermediation service provider to compete with the business user on the basis of the data. To ensure fairness, the provider of the online intermediation service should not be allowed to disclose to third parties for commercial purposes the data generated by the transactions of a business user, without the consent of the business user.*

Or. en

### *Justification*

*Information generated by business users should not allow unfair competition from the side of the platform. This information can put business users in a very disadvantageous position when competing with third parties, if third parties are given access to this data. This is especially the case where the third party is owned or controlled by the platform itself.*

## **Amendment 18**

### **Proposal for a regulation Recital 25**

#### *Text proposed by the Commission*

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

#### *Amendment*

(25) Providers of online intermediation services should bear a reasonable proportion of the total costs of the mediation, taking into account all relevant elements of the case at hand. To that aim, the mediator should suggest which proportion is reasonable in the individual case. However, that proportion should never be less than half of those costs, ***except for where the mediator determines that the business user who has brought the case has not acted in good faith.***

Or. en

### *Justification*

*In order to minimize the potential to abuse the mediation system, it must be required of both business users and platforms to act in good faith.*

## **Amendment 19**

### **Proposal for a regulation Recital 25 a (new)**

#### *Text proposed by the Commission*

#### *Amendment*

***(25 a) Since the providers of online intermediation services should always be required to identify mediators with which they are willing to engage, and should be obliged to engage in mediation in good faith, the obligation of mediation should***

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

Or. en

#### *Justification*

*The mediation obligation should be established in such a way that it does not allow for systematic abuse of mediation. This means that there could be some very limited and clearly defined exceptional cases in which a platform should not be obliged to engage with the business users in mediation.*

#### **Amendment 20**

##### **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,

###### *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.

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. ***Member States should be required to set up or nominate such public bodies. For the relevant public bodies, it should only be required that those have been specifically charged, in accordance with the relevant rules of national law, with bringing such actions either in the collective interest of the parties concerned or in the general interest, without there being a need to 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.***

Or. en

#### *Justification*

*In order to ensure that the provisions of this Regulation are enforced properly, each Member State should establish or designate an existing public body tasked with bringing forward claims of breaches of the Regulation. In order not to raise the costs of these bodies unnecessarily, already existing bodies can be tasked with the obligation described in this Regulation.*

#### **Amendment 21**

##### **Proposal for a regulation Recital 28 a (new)**

*Text proposed by the Commission*

*Amendment*

***(28 a) For reasons of transparency and accountability, and due to the role and tasks foreseen, the EU Observatory on the Online Platform Economy should be established as a body under this Regulation rather than as an expert group established by a Commission decision. The Observatory's members should consist of a wide range of independent experts that have proven competence and experience of the online platform economy.***

Or. en

## **Amendment 22**

### **Proposal for a regulation Recital 29**

*Text proposed by the Commission*

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

*Amendment*

(29) The Commission should periodically evaluate this Regulation ***and closely monitor its effects on the online platform economy***, in particular with a view to determining the need for amendments in light of relevant technological or commercial developments, ***and following the evaluation propose new legislation if and where necessary.***

Or. en

## **Amendment 23**

### **Proposal for a regulation Recital 30 a (new)**

***(30 a) This Regulation does not affect the possibility of an online intermediation service to be regarded as an employer under labour law if it behaves as such. In cases where an online intermediation service is to be regarded as an employer, the contractual relationship between provider of the online intermediation service and the user offering the good or service should not be governed as a business to business relationship within the meaning of this Regulation, but should be governed by all applicable labour law and collective agreements.***

Or. en

*Justification*

*Platform economy employment has increased in the recent years and is likely to increase also in the future. Several problems that have been identified in the context of the increase of platform economy employment should be addressed on the European level, among the most important the reported cases of bogus self-employment. It should be clarified that this Regulation does not affect cases where a platform behaves like an employer towards its users, in which case the relationship between the user and the platform should be governed by all applicable labour legislation and collective agreements to protect such workers.*

**Amendment 24**

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

*Text proposed by the Commission*

*Amendment*

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

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, ***fairness***, and effective redress possibilities.

Or. en

### *Justification*

*The title of this Regulation encompasses not only transparency, but also fairness. It should thus be included in Article 1.*

## **Amendment 25**

### **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 mobile applications** to offer goods or services to consumers for purposes relating to its trade, business, craft or profession;

Or. en

## **Amendment 26**

### **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 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.

Or. en

### *Justification*

*The safeguards offered by this Regulation set a minimum that should be respected in business to business relationships within this sector. These minimum conditions should be respected in all terms and conditions. In sectors with significant imbalances of negotiation power between the two sides, business users could be coerced into individual negotiations which could diminish their rights under this Regulation and could make large parts of this Regulation*

*redundant.*

## **Amendment 27**

### **Proposal for a regulation**

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

*Text proposed by the Commission*

*Amendment*

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

Or. en

#### *Justification*

*Business users have a right to know where their products are being marketed in order to keep control over their brand. It is therefore necessary that the platforms inform the business users of all the different channels they may use for marketing the goods or services of the business user.*

## **Amendment 28**

### **Proposal for a regulation**

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

*Text proposed by the Commission*

*Amendment*

***(a a) are fair and proportionate;***

Or. en

## **Amendment 29**

### **Proposal for a regulation**

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

*Text proposed by the Commission*

*Amendment*

***(c a) include information on any additional distribution channels and***

*potential affiliate programs through which the goods and services offered by the business user might be distributed.*

Or. en

## **Amendment 30**

### **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 15 days from the date on which the provider of online intermediation services notifies the business users concerned about the envisaged modifications. *In cases where the envisaged modifications require the business user to make significant technical adjustments to its goods or services, this period should be at least 30 days.*

Or. en

##### *Justification*

*In some cases, the 15 day notice period may be too short for the business user to be able to adjust their offering. A longer notice period should be foreseen where significant technical adjustments would be necessary for the business user to be able to continue to offer their goods or services.*

## **Amendment 31**

### **Proposal for a regulation**

#### **Article 3 – paragraph 3 – subparagraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

***Submitting new goods or services on the online intermediation service during the notice period shall be considered to be a clear affirmative action to waive the notice period.***

Or. en

## **Amendment 32**

### **Proposal for a regulation**

#### **Article 4 – title**

*Text proposed by the Commission*

*Amendment*

Suspension and termination

Suspension, ***delisting*** and termination

Or. en

## **Amendment 33**

### **Proposal for a regulation**

#### **Article 4 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

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

1. Where a provider of online intermediation services decides to suspend, ***delist*** or terminate, in whole or in part, the provision of its online intermediation services to a given business user, it shall ***inform*** the business user concerned ***at least 15 days before implementing that decision, and provide the business user*** with a statement of reasons for that decision.

Or. en

### *Justification*

*Business users may be dependent on being able to offer their goods or services on a platform and sudden changes may, especially in the cases of microenterprises or SMEs, remove the business user's main source of income. To be able to prepare better, the business users should be informed in advance, except for where the platform is under legal obligations to suspend, delist or terminate the provision of its services.*

### **Amendment 34**

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

#### **Article 4 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1 a. Paragraph 1 shall not apply where a provider of online intermediation services is subject to a legal obligation to suspend, delist or terminate, in whole or in part, the provision of its online intermediation services to a given business user. In such cases, the business user shall be notified without undue delay.***

Or. en

### **Amendment 35**

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

#### **Article 4 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***2 a. Paragraph 2 shall not apply where a provider of online intermediation services is subject to a legal obligation not to provide the specific facts or circumstances or the reference to the applicable objective ground or grounds.***

Or. en

## Amendment 36

### Proposal for a regulation

#### Article 5 – paragraph 1 – subparagraph 1

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

## Amendment 37

### Proposal for a regulation

#### Article 5 – paragraph 1 – subparagraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

***Individual parameters determining ranking shall be applied in a non-discriminatory manner to business users' goods or services.***

Or. en

## Amendment 38

### Proposal for a regulation

#### Article 5 a (new)

*Text proposed by the Commission*

*Amendment*

#### ***Article 5 a***

#### ***Ancillary goods and services***

***1. Where ancillary goods and services are offered to consumers through online intermediation service, either by the provider of the online intermediation service or by third parties, the providers of***

*the online intermediation service shall set out in their terms and conditions a description of the ancillary goods and services.*

**2.** *In cases where both the provider of the online intermediation service or third party and the business users offer ancillary goods and services, the description in paragraph 1 shall state clearly whether the ancillary goods and services provided by the business user will be offered to the consumer through the online intermediation service.*

*Providers of online intermediation services shall state clearly and visibly to the consumer who provides the ancillary goods and services and under which terms and conditions.*

Or. en

#### *Justification*

*Business users have a right to know where their products are being marketed in order to keep control over their brand. It is therefore necessary that the platforms inform the business users of all the different channels they may use for marketing the goods or services of the business user. The platforms should also be obliged to inform the consumer, in the case of ancillary goods or services, about who actually provides such goods and services.*

#### **Amendment 39**

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

##### **Article 6 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

**1 a.** *Providers of online intermediation services that provide, or control businesses that provide, goods or services that compete with those provided by business users, shall allow consumers to select which good or service to use as default when the consumer uses the online intermediation service for the first time. The consumer shall also be allowed not to select a default option.*

*Justification*

*A widely used practice in many platforms is to preconfigure services of the same company as the default option for consumers. Consumers generally rely on default services out of comfort, due to a lack of knowledge, because there are economic or technical barriers, and are unlikely to explicitly opt-out. This Regulation should be used in this regard to increase competitiveness in the online platform economy to the benefit of consumers by not allowing the pre-selection of default service without allowing for consumer choice.*

**Amendment 40**

**Proposal for a regulation**

**Article 6 – paragraph 2 – point c**

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

**Amendment 41**

**Proposal for a regulation**

**Article 7 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***2 a. The provider of the online intermediation service shall not disclose to third parties for commercial purposes data generated by the transactions of a business user without the consent of the business user.***

Or. en

## *Justification*

*Information generated by business users should not allow unfair competition from the side of the platform. This information can put business users in a very disadvantageous position when competing with third parties, if third parties are given access to this data. This is especially the case where the third party is owned or controlled by the platform itself. Thus the consent of the business user should be required where the platform intends to release the data to third parties for commercial purposes.*

### **Amendment 42**

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

#### **Article 7 – paragraph 2 b (new)**

*Text proposed by the Commission*

*Amendment*

**2 b. This Regulation shall not prejudice the application of Regulation (EU) 2016/679.**

Or. en

### **Amendment 43**

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

#### **Article 10 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

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

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

Or. en

### **Amendment 44**

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

#### **Article 10 – paragraph 4**

*Text proposed by the Commission*

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

*Amendment*

4. Providers of online intermediation services shall bear a reasonable proportion of the total costs of mediation in each individual case. A reasonable proportion of those total costs shall be determined, on the basis of a suggestion by the mediator, by taking into account all relevant elements of the case at hand, in particular the relative merits of the claims of the parties to the dispute, the conduct of the parties, as well as the size and financial strength of the parties relative to one another. However, providers of online intermediation services shall bear at least half of the total cost, ***except in cases where the mediator determines that the business user has not acted in good faith.***

Or. en

**Amendment 45**

**Proposal for a regulation**

**Article 10 – paragraph 4 a (new)**

*Text proposed by the Commission*

*Amendment*

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

Or. en

### *Justification*

*The mediation obligation should be established in such a way that it does not allow for systematic abuse of mediation. This means that there could be some very limited and clearly defined exceptional cases in which a platform should not be obliged to engage with the business users in mediation.*

## **Amendment 46**

### **Proposal for a regulation**

#### **Article 12 – paragraph 2 – subparagraph 2**

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

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

##### *Amendment*

Member States *shall set up or nominate* public bodies *for the purposes of this Article*. Those public bodies shall have the right referred to in paragraph 1, *and shall be* charged with defending the collective interests of business users or corporate website users or with ensuring compliance with the requirements laid down in this Regulation, in accordance with the national law of the Member State concerned.

Or. en

### *Justification*

*In order to ensure that the provisions of this Regulation are enforced properly, each Member State should establish or designate an existing public body tasked with bringing forward claims of breaches of the Regulation. In order not to raise the costs of these bodies unnecessarily, already existing bodies can be tasked with the obligation described in this Regulation.*

## **Amendment 47**

### **Proposal for a regulation**

#### **Article 13 – paragraph 2 a (new)**

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

##### *Amendment*

*2 a. Where an online intermediation service is primarily involved in one single sector where a sector specific code of conduct exists and is widely used, the Commission shall encourage the online*

*intermediation service to adopt and implement the sector specific code of conduct.*

Or. en

## **Amendment 48**

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

*Text proposed by the Commission*

*Amendment*

#### *Article 13 a*

##### *Platform Observatory*

- 1. The group of experts for the EU Observatory on the Online Platform Economy (“the group”) shall be established.*
- 2. The group shall be composed of 15 members, appointed for a term of two years. Members shall be individuals appointed in a personal capacity. They shall have a proven competence and experience in respect of the online platform economy in general or of specific digital technologies, business models or other issues related thereto. Powers shall be delegated to the Commission for the application and nomination process.*
- 3. Members shall act independently and in the public interest.*
- 4. Members who are no longer capable of contributing effectively to the group’s deliberations, who, in the opinion of the Commission’s Directorate General for Communication Networks, Content and Technology and the Directorate General for Internal Market, Industry, Entrepreneurship and SMEs (“responsible Directorates-General of the Commission”), do not comply with the conditions set out in Article 339 of the Treaty on the Functioning of the*

*European Union or who resign, shall no longer be invited to participate in any meetings of the group and may be replaced for the remainder of their term.*

**5. The Group shall have the following tasks:**

*(a) to provide the Commission with advice and expertise on the evolution of the online platform economy, in particular as regards potentially harmful practices in commercial transactions between, on the one hand, providers of online intermediation services and of online search engines and, on the other hand, undertakings established in the Union that use or intend to use those online services to offer their goods or services to consumers located in the Union;*

*(b) to perform expert analysis on issues of particular importance that may arise in relation to the online platform economy and the potentially harmful practices referred to in point (a), including:*

*(i) issues related to algorithmic decision-making and ranking in connection with the provision of online intermediation services and online search engines, including the question of transparency;*

*(ii) access to, and use of, different categories of personal data and other data, in compliance with data protection rules, provided or generated in the context of the provision and use of online intermediation services and online search engines;*

*(iii) issues related to remuneration for material displayed online, in particular in relation to search results;*

*(iv) transparency and accountability in business-to-business commercial relations in online advertising;*

*(v) differentiated treatment which*

*providers of online intermediation services might give to goods and services offered by themselves or by the undertakings which they control;*

*(vi) restrictions to offer different conditions when using other distribution channels which providers of online intermediation services might impose on business users;*

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

*(c) to assist the Commission in the preparation of its annual work programme, as regards the issues referred to in point (b);*

*(d) to analyse the evolution of regulation, self-regulation or other policy measures related to the online platform economy in the Member States or, where relevant, for the online platform economy in the Union, in third countries;*

*(e) at the request of the Commission, and under its supervision, to liaise on specific issues related to the online platform economy with other relevant expert bodies or centres of excellence at national, Union, or international level, to the extent necessary to perform the other tasks set out in this Article.*

*6. The Group shall meet at least twice a year, or at the request of the Commission, may meet more often. The Commission shall chair the Group and provide the secretariat to it.*

Or. en

#### *Justification*

*The Platform Observatory will have several important tasks when it comes to the monitoring of the online ecosystem and its developments. Its views should also be taken into account in any possible revision of this Regulation. As such, it would be appropriate that the Platform Observatory is established in co-decision as a part of this Regulation.*

## Amendment 49

### Proposal for a regulation Article 14 – paragraph 1

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

### *Justification*

*Three years is a long time given the current speed of developments in the online platform economy. The review period should be shortened to allow for next regulatory steps to be taken sooner, where and if necessary after a review of the fairness and transparency in the online platform economy following the application of the provisions in this Regulation.*

## Amendment 50

### Proposal for a regulation Article 14 – paragraph 2

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

## Amendment 51

### Proposal for a regulation

#### Article 14 – paragraph 2 – point a (new)

*Text proposed by the Commission*

*Amendment*

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

Or. en

## Amendment 52

### Proposal for a regulation

#### Article 14 – paragraph 2 – point b (new)

*Text proposed by the Commission*

*Amendment*

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

Or. en

## Amendment 53

### Proposal for a regulation

#### Article 14 – paragraph 2 – point c (new)

*Text proposed by the Commission*

*Amendment*

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

Or. en

## **Amendment 54**

### **Proposal for a regulation**

#### **Article 14 – paragraph 2 – point d (new)**

*Text proposed by the Commission*

*Amendment*

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

Or. en

## **Amendment 55**

### **Proposal for a regulation**

#### **Article 14 – paragraph 2 – point e (new)**

*Text proposed by the Commission*

*Amendment*

***(e) assessing whether this Regulation should be complemented or amended by the introduction of thresholds for certain rules and obligations to better target the issues identified in the online platform economy;***

Or. en

## **Amendment 56**

### **Proposal for a regulation**

#### **Article 14 – paragraph 2 – point f (new)**

*Text proposed by the Commission*

*Amendment*

***(f) assessing whether imbalances also exist in the relationships between***

*providers of operating systems and their business users;*

Or. en

## **Amendment 57**

### **Proposal for a regulation**

#### **Article 14 – paragraph 2 – point g (new)**

*Text proposed by the Commission*

*Amendment*

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

Or. en

## **Amendment 58**

### **Proposal for a regulation**

#### **Article 14 – paragraph 2 – subparagraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

*The evaluation shall establish whether additional rules, including regarding enforcement, may be required to ensure a fair, predictable, sustainable and trusted online business environment within the internal market. Where necessary, following the evaluation, the Commission shall present a legislative proposal.*

Or. en

#### *Justification*

*The review is an extremely important tool in the context of this Regulation. It is an opportunity to gather further information and evidence on the developments in the online platform economy. The review should be more extensive and explicit in its aims and should be followed by further regulatory steps where and if necessary.*

## Amendment 59

### Proposal for a regulation Article 14 – paragraph 4

#### *Text proposed by the Commission*

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

#### *Amendment*

4. In carrying out the evaluation of this Regulation, the Commission shall take into account the opinions and reports presented to it by the group of experts for the ***EU*** Observatory on the Online Platform Economy established in accordance with ***Article 13a***. ***Where appropriate***, it shall also take into account the content and functioning of any codes of conduct referred to in Article 13.

Or. en

## **EXPLANATORY STATEMENT**

### **Introduction**

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

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

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

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

### **The impact of the proposal on consumers**

The rapporteur believes that wherever the dominant position of platforms make them become gatekeepers of the information, choice and prices, and certain minimum standards of fairness and transparency are not guaranteed, the consumer welfare is damaged. Moreover, lack of transparency and legal uncertainty in the platform economy, including in business-to-business relations, may diminish consumer trust in the online economy. This Regulation should therefore improve the fairness and transparency for business users of platforms, but also, bear in mind that the measures must guarantee consumer access to a competitive, fair, and transparent online ecosystem. Specifically, one issue that has been identified is the prevalence of business users being discriminated when competing with certain products on online platforms that appear as default options to the consumer. This is especially true when the online platform itself provides a service without informing the consumers that there are viable

alternatives on the platform. Thus, in Article 6, platforms that provide goods or services that compete with those provided by business users should allow consumers to select which good or service to use as default when using the platform for the first time. The consumer should also be allowed not to select a default option at all.

### **Scope of the Proposal and Definitions**

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

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

### **Fair and Proportionate Terms and Conditions**

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

### **Ancillary goods and services**

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

platform. The purpose is to make sure that wherever goods and services are offered to consumers through platforms, the latter would be obliged to set out in their terms and conditions clearly and visibly to the consumer a description of the services, who provides them and under which terms and conditions. This would apply irrespectively of whether the platform offered these ancillary goods and services themselves or through third parties.

### **More transparency on additional channels**

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

### **More transparency in the ranking parametres**

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

### **Access to data**

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

### **Mediation**

Since platforms should always be required to identify mediators with which they are willing to engage, and should be obliged to engage in mediation in good faith, the obligation of mediation should be established in a way that prevents abuse of the mediation system by

business users. As such, business users should also be obliged to engage in mediation in good faith. Furthermore, this regulation should address the issue of possible abuse of the mediation obligation by repeated or spurious cases by a business user. As such, in certain clearly defined exceptional cases, the platform should not be obliged to engage in mediation with a business user.

### **The Platform Observatory and review of the regulation**

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

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