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NOTE

From:	Presidency/General Secretariat of the Council
To:	Permanent Representatives Committee
No. Cion doc.:	8413/18 + ADD 1
Subject:	Proposal for a Regulation of the European Parliament and of the Council on promoting fairness and transparency for business users of online intermediation services - Preparation for a general approach

I. INTRODUCTION

1. On 26 April 2018, the Commission submitted the above-mentioned proposal for a Regulation of the European Parliament and the Council.¹ The proposal is based on Article 114 of the Treaty on the Functioning of the European Union (TFEU).

¹ Doc. 8413/18 + ADD1.

2. The Regulation aims to contribute to the proper functioning of the internal market by laying down rules to ensure that business users of online intermediation services, as well as corporate website users in relation to online search engines, are granted appropriate transparency and effective redress possibilities.
3. The European Economic and Social Committee provided its opinion on the proposal on 19 September 2018.²
4. The European Parliament Committee on the Internal Market and Consumer Protection (IMCO) has not yet voted on its report.

II. WORK CONDUCTED IN THE COUNCIL PREPARATORY BODIES

5. The examination of the proposal by the Working Party on Competitiveness and Growth started on 4 May 2018 and has since continued with the objective to reach a general approach before the end of the Austrian Presidency.
6. In its 11 formal meetings, which were held during the Bulgarian and Austrian Presidencies, the Working Party has mostly concentrated its discussions on the scope of the regulation, suspension and termination clauses contained within the regulation, ranking of search results, judicial proceedings as part of the possible redress possibilities, and the enforcement of the Regulation.

² TEN/662-EESC-2018.

7. The impact assessment accompanying this proposal was examined in detail during two Working Party meetings on 23 May and 11 June 2018. The examination showed that delegations generally supported the aim of the proposal, as well as the methods, criteria and options identified by the Commission.
8. The discussions at the Working Party level have reached a stage where it seems appropriate to submit the full text of the proposal to the Permanent Representatives Committee (COREPER) in view of endorsing it and forwarding it to the Competitiveness Council of 29 November 2018 in order to be able to reach a general approach on the proposal.

There is general support among the Member States for the overall objectives of the proposal, however, on certain issues (see section III) COREPER might need to further examine and endorse compromise wordings provided by the Presidency.

III. MAIN POLITICAL ISSUES

9. Based on the discussions at Working Party level, the Presidency identified the following points as the main political issues:
 - a) **Scope** (Article 1): Since the scope of the Regulation specifically covers appropriate transparency and effective redress possibilities, the compromise text now clarifies its relation to national rules concerning civil law, unilateral conduct and unfair commercial practices, which are in conformity with Union law. The contribution of this Regulation to the proper functioning of the internal market has also been emphasised.
 - b) **Suspension and termination** (Article 4): The compromise text of Article 4 includes a solution which strikes a sensible balance between possible actions of online intermediation service providers and behaviour of their business users by ensuring that the suspension of online intermediation services – in relation to individual goods or services offered by business users – may be considered as a first and reasoned step before terminating the provision of online intermediation service in whole. A minimum period of 30 days is to be ensured before termination enters into effect.

- c) **Judicial proceedings** (Article 12): The compromise text of Article 12 contains a balanced approach between the initial Commission proposal on legal standing of organisations, associations and public bodies, and the possibility of Member States to designate them in advance with the aim to make judicial procedures more efficient and shorter.
 - d) **Enforcement** (Article 12a): This new Article in the Presidency compromise text aims to provide an effective enforcement of the Regulation by obliging Member States to set out effective, proportionate and dissuasive penalties, applicable to infringements of the Regulation, without the obligation for the Member States to set up new enforcement systems.
10. The Presidency considers that the text, as set out in the Annex to this note, presents a balanced compromise of views expressed by the delegations and could be forwarded on to the ministerial level. Changes compared to the Commission proposal are marked **in bold** and/or ~~strikethrough~~.

IV. CONCLUSION

11. COREPER is invited to examine the main issues and to endorse the compromise text as set out in the Annex to this note, with a view to submitting it to the Competitiveness Council for a general approach at its meeting on 29 November 2018.
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Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on promoting fairness by means of ~~and~~ transparency for business users of online intermediation services and for corporate website users in relation to online search engines

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee³,

Having regard to the opinion of the Committee of the Regions⁴,

Acting in accordance with the ordinary legislative procedure,

³ OJ C , , p. .

⁴ OJ C , , p. .

Whereas:

- (1) Online intermediation services are key enablers of entrepreneurship, trade and innovation, which can also improve consumer welfare and which are increasingly used by both the private and public sectors. They offer access to new markets and commercial opportunities allowing undertakings to exploit the benefits of the internal market. They also allow consumers in the Union to exploit those benefits, in particular by increasing their choice of goods and services offered online.
- (2) Online intermediation services can be crucial for the commercial success of undertakings who use such services to reach consumers. **To fully exploit the benefits of the platform economy, it is therefore important that undertakings can trust platforms with which they enter into commercial relationships. This is important mainly because** 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, particularly 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.

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

- (5) Online intermediation services and online search engines, as well as the ~~commercial~~ transactions facilitated by those services, have an intrinsic cross-border potential and are of particular importance for the proper functioning of the Union's internal market in today's economy. The potentially unfair and harmful trading practices of certain providers of those services ~~in respect of business users and corporate website users~~ **and the lack of effective redress mechanisms** hamper the full realisation of that potential and negatively affect the proper functioning of the internal market. ~~In addition, the full realisation of that potential is hampered, and the proper functioning of the internal market is negatively affected, by diverging laws of certain Member States which, with a varying degree of effectiveness, regulate those services, while other Member States are considering adopting such laws.~~
- (5a) A targeted set of mandatory rules **on transparency** 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 should be** afforded appropriate transparency as well as effective redress possibilities throughout the Union **in order to facilitate cross border business within the Union and thereby improve the proper functioning of the internal market and to address possible emerging fragmentation in the specific areas covered by the provisions of this Regulation. Following a step by step approach, the Commission should evaluate the functioning of these rules, including whether further regulation is needed, within the review process as provided for in this Regulation.**

- (6) ~~A uniform and targeted set of mandatory rules should therefore be established at Union level to ensure a fair, predictable, sustainable and trusted online business environment within the internal market by ensuring, in particular, that the business users of online intermediation services are afforded appropriate transparency as well as effective redress possibilities throughout the Union.~~ Those rules should also provide for appropriate transparency as regards the ranking of corporate website users in the search results generated by online search engines. At the same **time**, those rules should be such as to safeguard the important innovation potential of the wider online platform economy. **It is appropriate to clarify that this Regulation should not affect national civil law, in particular contract law, such as the rules on the validity, formation, effects or termination of a contract, in so far as the national civil law rules are in conformity with Union Law and to the extent that the relevant aspects are not covered by the provisions of this Regulation. Member States should remain free to apply national laws which prohibit or sanction unilateral conduct or unfair commercial practices.**

- (7) Since online intermediation services and online search engines typically have a global dimension, this Regulation should apply to providers of those services regardless of whether they are established in a Member State or outside the Union, provided that two cumulative conditions are met. Firstly, the business users or corporate website users should be established in the Union. Secondly, the business users or corporate website users should, through the provision of those services, offer their goods or services to consumers located in the Union at least for part of the transaction. Such consumers should be located in the Union, but do not need to have their place of residence in the Union nor have the nationality of any Member State. Accordingly, this Regulation should not apply where the business users or corporate websites users are not established in the Union or where they are established in the Union but where they use online intermediation services or online search engines to offer goods or services exclusively to consumers located outside the Union or to persons who are not consumers. **Furthermore, this Regulation should apply irrespective of the law otherwise applicable to a contract.**
- (8) A wide variety of business-to-consumer commercial relations are intermediated online by providers operating multi-sided services that are essentially based on the same ecosystem-building business model. In order to capture the relevant services, online intermediation services should be defined in a precise and technologically-neutral manner. In particular, the services should consist of information society services, which are characterised by the fact that they aim to facilitate the initiating of direct transactions between business users and consumers, irrespective of whether the transactions are ultimately concluded either online, on the online portal of the provider of the online intermediation services in question or that of the business user, ~~or~~ offline **or in fact not at all.** In addition, the services should be provided on the basis of contractual relationships between the providers and business users **which offer goods or services to consumers** ~~and between the providers and the consumers~~. Such a contractual relationship should be deemed to exist where both parties concerned express their intention to be bound in an unequivocal ~~and verifiable~~ manner **on a durable medium**, without an express written agreement necessarily being required.

- (9) Examples of online intermediation services covered by this Regulation should consequently include online e-commerce market places, including collaborative ones on which business users are active, online software applications services, **such as application stores,** and online social media services, **irrespective of the technology used to provide such services. In this sense, online intermediation services could also be provided by means of voice assistant technology. It should also not be relevant whether or not those transactions involve any monetary payment or that transactions are concluded in part offline.** However, this Regulation should not apply to **peer-to-peer online intermediation services without the presence of business users, pure business-to-business online intermediation services which are not offered to consumers,** online advertising serving tools ~~or~~ **and** 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. **For the same reason, search engine optimisation software services as well as services which revolve around advertising-blocking software are not covered by this Regulation. Also, technology online intermediation services that connect hardware and applications are not covered by this Regulation, as these are not directly connected with the provision of goods or services.** 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.
- (10) In line with the relevant case-law of the Court of Justice of the European Union and in light of the fact that the dependent position of business users has been observed principally in respect of online intermediation services that serve as a gateway to consumers in the form of natural persons, the notion of consumer used to delineate the scope of this Regulation is to be understood as referring solely to natural persons, where they are acting for purposes which are outside their trade, business, craft or profession.

- (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 Council⁵.
- (12) In order to effectively protect business users where needed, this Regulation should apply where the terms and conditions of a contractual relationship, regardless of their name or form, are ~~not~~ **unilaterally determined** ~~individually negotiated~~ by the **provider of online intermediation services** ~~parties to them~~. Whether or not terms and conditions were **unilaterally determined** ~~individually negotiated~~ should be ~~determined~~ **evaluated** on the basis of an overall assessment, whereby the fact that certain provisions thereof may have been individually negotiated is, in itself, not decisive.
- (13) To ensure that the general terms and conditions of a contractual relationship enable business users to determine the commercial conditions for the use, termination and suspension of online intermediation services, and to achieve predictability regarding their business relationship, those terms and conditions should be drafted in **plain and intelligible** ~~clear and unambiguous~~ language ~~which is easily understood by an average business user~~. Terms and conditions should not be considered to have been drafted in **plain and intelligible** ~~clear and unambiguous~~ language where they are vague, unspecific or lack detail on important commercial issues and thus fail to give business users a reasonable degree of predictability on the most important aspects of the contractual relationship.

⁵ 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).

- (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 **on a durable medium** 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. **However, proposed editorial changes should not be covered by the term ‘modification’ in as far as they do not alter the content or meaning of terms and conditions. The requirement of notifying proposed modifications on a durable medium, such as through e-mails or other communication systems that allow, inter alia, the receiving and storing of any type of messages, should enable business users to effectively review these modifications at a later stage.**

(15) In order to protect business users ~~it should be possible for a competent court to establish that~~ non-compliant terms and conditions ~~are~~ **should** not **be** binding on the business user concerned, with effects *ex tunc* ~~in~~. ~~Any such finding by a court~~ **This** should however only concern the specific provisions of the terms and conditions which are not compliant. The remaining provisions should remain valid and enforceable, in as far as they **are valid and enforceable under national law and** can be severed from the non-compliant provisions. ~~Sudden modifications to existing terms and conditions may significantly disrupt business users' operations. In order to limit such negative effects on business users, and to discourage such behaviour, modifications made in contravention of the obligation to provide a set notice period, should therefore be null and void, that is, deemed to have never existed with effects erga omnes and ex tunc.~~ **It is appropriate to clarify that the provider of online intermediation services should not rely on or derive claims from any non-compliant terms and conditions, or provisions thereof. Any further review of the content of terms and conditions under national law should remain unaffected.**

- (16) A provider of online intermediation services can have legitimate reasons to decide to suspend ~~or terminate~~ the provision of its services, ~~in whole or in part~~, to a given business user, including by delisting individual goods or services of a given business user or effectively removing search results. However, given that such decisions can significantly affect the interests of the business user concerned, they should be **provided properly informed of the reasons thereof, prior to or at the time of the suspension taking effect, with a statement of reasons for that decision on a durable medium**. 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, **including with a view to reinstatement of suspended goods or services**. ~~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 2018/334⁴.~~ 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.

4 — ~~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).~~

(16a) The termination of the whole of the online intermediation services and the related deletion of data provided for the use of or generated through the provision of online intermediation services represent a loss of essential information, which could have a significant impact on business users and could also impair their ability to properly exercise other rights granted to them by this Regulation. Therefore, the provider of online intermediation services should provide the business user concerned with a statement of reasons on a durable medium, at least 30 days before the termination of the whole of its online intermediation services enters into effect. However, in cases where a regulatory obligation requires a provider of online intermediation services to terminate the provision of the whole of its online intermediation services to a given business user, this notice period should not apply. Equally, the notice period of 30 days should not apply where a provider of online intermediation services invokes rights of termination under national law in compliance with Union law which allow immediate termination where, taking into account all the circumstances of the specific case and weighing the interests of both parties, it cannot reasonably be expected to continue the contractual relationship until the agreed end or until the expiry of a notice period. In order to ensure proportionality, providers of online intermediation services should, where reasonable and technically feasible, carry out only in part suspension or termination of their services, such as by means of delisting only specific goods or services of a business user. Suspension and termination, in whole, constitutes the most severe measure.

- (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. **Ranking refers to the relative prominence of the offers of business users or relevance given to search results as presented, organised or communicated by providers of online intermediation services or by providers of online search engines, resulting from the use of algorithmic sequencing, rating or review mechanisms, visual highlights, or other saliency tools, or combinations thereof.** 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.

(17a) 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. **Remuneration could in this respect refer to payments made with the main or exclusive aim to improve ranking, as well as indirect remuneration in the form of the acceptance by a business user of additional obligations of any kind which may have this as its practical effect, such as the use of any premium features or ancillary services. The content of the description, including the number and type of main parameters, can accordingly vary strongly depending on the specific online intermediation services or online search engine concerned, but** This description should provide business users with an adequate understanding of how the ranking mechanism takes account of the characteristics of the actual goods or services offered by the business user, and their relevance to the consumers of the specific online intermediation services. **The indicators used for measuring the quality of goods or services of business users, the use of editors and their ability to influence the ranking of those goods or services, the amplitude of the impact of remuneration on ranking as well as elements that do not or only remotely relate to the product or service itself, such as presentational features of the online offer, could be examples of main parameters that, when included in a general description of the ranking mechanism in plain and intelligible language, should assist business users in obtaining the required adequate understanding of its functioning.**

(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 **and the relative importance of those main parameters as opposed to other parameters**, including those of corporate website users as well as other websites. In addition to the characteristics of the goods and services and their relevance for consumers, this description should in the case of online search engines also allow corporate website users to obtain an adequate understanding of whether, and if so how and to what extent, certain design characteristics of the website used, such as their optimisation for display on mobile telecommunications devices, is taken into account **and 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**. 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. **Areas of websites that require users to log in or register should not be understood as easily and publicly available in this sense**. 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.

(18a) Providers of online intermediation services or of online search engines should not be required to disclose the detailed functioning of their ranking mechanisms, including algorithms, under this Regulation. Their ability to act against bad faith manipulation of ranking by third parties, including in the interest of consumers, should equally not be impaired. A general description of the main ranking parameters should safeguard those interests, while providing business users and corporate website users with an adequate understanding of the functioning of ranking in the context of their use of specific online intermediation services or online search engines. To ensure that the objective of this Regulation is achieved, consideration of the commercial interests of providers of online intermediation services or online search engines should therefore never lead to a refusal to disclose the main parameters determining ranking. In this regard, 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 Council⁷ 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. **Where main parameters or information on their relative importance are considered to be trade secrets, point (b) of Article 1(2) of Directive (EU) 2016/943 should apply.**

⁷ 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).

- (19) Where a provider of online intermediation services itself offers certain goods or services to consumers through its own online intermediation services, or does so through a business user which it controls, that provider may compete directly with other business users of its online intermediation services which are not controlled by the provider. In such situations, in particular, it is important that the provider of online intermediation services acts in a transparent manner and provides a description of any differentiated treatment, whether through legal, commercial or technical means, that it might give in respect of goods or services it offers itself compared to those offered by business users. To ensure proportionality, this obligation should apply at the level of the overall online intermediation services, rather than at the level of individual goods or services offered through those services.
- (20) The ability to access and use data, including personal data, can enable important value creation in the online platform economy, **both generally as well as for the business users and online intermediation services involved**. 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. **Such transparency measures could contribute to increased data sharing and enhance, as a key source of innovation and growth, the aims to create a common European data space**. Processing of personal data should comply with **data protection rules of the Union, notably** Regulation (EU) 2016/679 of the European Parliament and of the Council.⁸

⁸ 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).

- (21) Providers of online intermediation services might in certain cases restrict in the terms and conditions the ability of business users to offer goods or services to consumers under more favourable conditions through other means than through those online intermediation services. In those cases, the providers concerned should set out the grounds for doing so, in particular with reference to the main economic, commercial or legal considerations for the restrictions. This transparency obligation should however not be understood as affecting the assessment of the legality of such restrictions under other acts of Union law or the law of Member States in accordance with Union law, including in the areas of competition and unfair commercial practices, and the application of such laws.
- (22) In order to enable business users, including those whose use of the relevant online intermediation services might have been suspended or terminated, to have access to immediate, suitable and effective redress possibilities, providers of online intermediation services should provide for an internal complaint-handling system. That internal complaint-handling system should be aimed at ensuring that a significant proportion of complaints can be solved bilaterally by the provider of the online intermediation services and the relevant business user. In addition, ensuring that providers of online intermediation services publish information on the functioning and effectiveness of their internal complaint-handling system should help business users to understand the types of issues that can arise in the context of the provision of different online intermediation services and the possibility of reaching a quick and effective bilateral resolution.

(23) The requirements of this Regulation regarding the internal complaint-handling systems aim at allowing providers of online intermediation services a reasonable degree of flexibility when operating those systems and addressing individual complaints, so as to minimise any administrative burden. In addition, the internal complaint-handling systems should allow providers of online intermediation services to address, where necessary, in a proportionate manner any use in bad faith which certain business users might seek to make of those systems. ~~In cases other than any alleged non-compliance with the legal obligations of this Regulation, the internal complaint handling systems should moreover not be open to complaints involving only negligible negative effects on the business user concerned.~~ In light of the costs of setting up and operating such systems, it is appropriate to exempt from those obligations any providers of online intermediation services which constitute small enterprises, in line with the relevant provisions of Commission Recommendation 2003/361/EC⁹. **The consolidation rules laid down in this Recommendation ensure that any circumvention is prevented. This exemption should not affect the right of such enterprises to set up, on a voluntary basis, an internal complaint handling system that complies with the criteria set out in this Regulation.**

⁹ ~~Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium sized enterprises (OJ L 124, 20.5.2003, p36).~~

(24) Mediation can offer providers of online intermediation services and their business users a means to resolve disputes in a satisfactory manner, without having to use judicial proceedings which can be lengthy and costly. Therefore, providers of online intermediation services should facilitate mediation by, in particular, identifying **at least two public or private** mediators with which they are willing to engage. **The minimum number of mediators to be identified aims at safeguarding the mediators' neutrality.** Mediators which provide their services from a location outside the Union should only be identified where it is guaranteed that the use of those services does not in any way deprive the business users concerned of any legal protection offered to them under Union law or the law of the Member States, including the requirements of this Regulation and the applicable law regarding protection of personal data and trade secrets. In order to be accessible, fair, and as swift, efficient and effective as possible, those mediators should meet certain set criteria. **Nonetheless, providers of online intermediation services and their business users should remain free to jointly identify any mediator of their choice after a dispute has arisen between them. In line with Directive (EU) No 2008/52 the mediation provided for in this Regulation should be a voluntary process in the sense that the parties are themselves in charge of the process and may start and terminate it at any time. Notwithstanding its voluntary nature, providers of online intermediation services should examine in good faith requests to engage in the mediation provided for in this Regulation.**

- (25) Providers of online intermediation services should bear a reasonable proportion of the total costs of the mediation, taking into account all relevant elements of the case at hand. To that aim, the mediator should suggest which proportion is reasonable in the individual case. ~~However, that proportion should never be less than half of those costs.~~ **In light of the costs and administrative burden associated with the necessity to identify mediators in terms and conditions, it is appropriate to exempt from that obligation any providers of online intermediation services which constitute small enterprises, in line with the relevant provisions of Commission Recommendation 2003/361/EC. The consolidation rules laid down in this Recommendation ensure that any circumvention is prevented. Nevertheless, this should not affect the right of such enterprises to identify mediators in their terms and conditions that comply with the criteria set out in this Regulation.**
- (26) In order to facilitate the settlement of disputes relating to the provision of online intermediation services using mediation in the Union, the Commission should encourage the setting up of specialised mediation organisations, which are currently lacking. The involvement of mediators having specialist knowledge of online intermediation services and online search engines as well as of the specific industry sectors within which those services are provided should add to the confidence both parties have in the mediation process and should increase the likelihood of that process leading to a swift, just and satisfactory outcome.

(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 **in accordance with national law, including national procedural requirements**. 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. **In particular, they must be properly constituted according to the law of a Member State, be of a non-profit making character and pursue their objectives on a sustained basis. These requirements should prevent any ad hoc constitution of organisations or associations for the purpose of a specific action or specific actions, or for the sake of making profits. Furthermore, the full and public disclosure of information on membership, governance structure and finances should prevent any undue influence by any third party providers of financing. In order to avoid a conflict of interest, organisations or associations representing business users or corporate website users should not accept financing from any providers of online intermediation services or of any online search engines.** 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.

(27a) Organisations, associations and public bodies which, in the view of the Member States, should be qualified to bring an action according to the provisions of this Regulation, should be communicated to the Commission. In the course of such a communication, Member States should make specific reference to the relevant national provisions according to which the organisation, association or public body was constituted and, where appropriate, refer to the relevant public register in which the organisation or association is registered. This additional option of a designation by Member States should provide for a certain level of legal certainty and predictability that business users and corporate website users can rely on. At the same time, it aims at making judicial procedures more efficient and shorter, which seems appropriate in this context. The Commission should ensure the publication of a list of these organisations, associations and public bodies in the *Official Journal of the European Union*, whereby this list should serve as refutable proof of the legal capacity of the organisation, association or public body bringing the action. In case there are any concerns regarding a designation the Member State which designated an organisation, association or public body should investigate those concerns. Organisations, associations and public bodies that are not designated by a Member State should have the possibility to bring an action before national courts subject to examination of legal capacity according to the criteria set out in this Regulation. 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.

(27b) Different enforcement systems already exist in Member States, which should not be obliged to set up new national enforcement bodies. Member States should have the option to entrust existing authorities, including courts, with the enforcement of this Regulation. This Regulation should not oblige Member States to provide for *ex officio* enforcement or to impose fines.

- (28) Codes of conduct, drawn up either by the service providers concerned or by organisations or associations representing them, can contribute to the proper application of this Regulation and should therefore be encouraged. When drawing up such codes of conduct, in consultation with all relevant stakeholders, account should be taken of the specific features of the sectors concerned as well as of the specific characteristics of micro, small and medium-sized enterprises. **Such codes of conduct should therefore be worded in an objective and non-discriminatory way in order to avoid unnecessary entry barriers.**
- (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. **In order to obtain a broad view of such developments the evaluation should consider the experiences of Member States and relevant stakeholders.**
- (30) When providing the information required under this Regulation, account should be taken as much as possible of the particular needs of persons with disabilities, in line with the objectives of the United Nations Convention on the Rights of Persons with Disabilities¹⁰.
- (31) As the objective of this Regulation, namely to **regulate specific aspects of transparency and redress in order to** ensure a fair, predictable, sustainable and trusted online business environment within the internal market, cannot be sufficiently achieved by the Member States, but can rather, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.

¹⁰ United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), available at: <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html>

- (32) ~~It is appropriate to clarify that this Regulation should not affect the application of the relevant rules of Union law applicable in the areas of judicial cooperation in civil matters, competition, consumer protection, electronic commerce and financial services.~~
- (33) This Regulation seeks to ensure full respect for the right to an effective remedy and to a fair trial and promote the application of the freedom to provide a business, laid down in Article 47 and Article 16 of the Charter of Fundamental Rights of the European Union respectively.

HAVE ADOPTED THIS REGULATION:

Article 1

Subject-matter and scope

1. **The purpose of this Regulation is to contribute to the proper functioning of the internal market by** ~~the lay~~**ings** down rules to ensure that business users of online intermediation services and corporate website users in relation to online search engines are granted appropriate transparency and effective redress possibilities.
2. This Regulation shall apply to online intermediation services and online search engines provided, or offered to be provided, to business users and corporate website users, respectively, that have their place of establishment or residence in the Union and that, through online intermediation services or online search engines, offer goods or services to consumers located in the Union, irrespective of the place of establishment or residence of the providers of those services **and irrespective of the law otherwise applicable.**

- 3. This Regulation shall be without prejudice to national rules which, in conformity with Union law, prohibit or sanction unilateral conduct or unfair commercial practices. This Regulation shall not affect national civil law, in particular contract law, such as the rules on the validity, formation, effects or termination of a contract, in so far as the national civil law rules are in conformity with Union law and to the extent that the relevant aspects are not covered by the provisions of this Regulation.**
- 4. This Regulation shall be without prejudice to Union law applicable in the areas of judicial cooperation in civil matters, competition, data protection, trade secrets protection, consumer protection, electronic commerce and financial services.**

Article 2

Definitions

For the purposes of this Regulation, the following definitions shall apply:

- (1) 'business user' means any natural or legal person which through online intermediation services offers goods or services to consumers for purposes relating to its trade, business, craft or profession;
- (2) 'online intermediation services' means services which meet all of the following requirements:
- (a) they constitute information society services within the meaning of Article 1(1)(b) of Directive (EU) No 2015/1535 of the European Parliament and of the Council¹¹;

¹¹ Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (OJ L 241, 17.9.2015, p. 1).

- (b) they allow business users to offer goods or services to consumers, with a view to facilitating the initiating of direct transactions between those business users and consumers, irrespective of where those transactions are ultimately concluded;
- (c) they are provided to business users on the basis of contractual relationships between, ~~on the one hand,~~ the provider of those services and, ~~on the other hand,~~ both those business users, **which offer goods or services to consumers** and the consumers to which those ~~business users offer goods or services;~~
- (3) 'provider of online intermediation services' means any natural or legal person which provides, or which offers to provide, online intermediation services to business users;
- (4) 'consumer' means any natural person who is acting for purposes which are outside his or her trade, business, craft or profession;
- (5) 'online search engine' means a digital service that allows users to perform searches of, in principle, all websites or websites in a particular language on the basis of a query on any subject in the form of a keyword, phrase or other input, and returns ~~links~~ **results in any format** in which information related to the requested content can be found;
- (6) 'provider of online search engine' means any natural or legal person which provides, or which offers to provide, online search engines to consumers;
- (7) 'corporate website user' means any natural or legal person which uses ~~websites~~ **an online interface, meaning any software, including a website or a part thereof and applications, including mobile applications,** to offer goods or services to consumers for purposes relating to its trade, business, craft or profession;

- (8) 'ranking' means the relative prominence given to the goods or services offered to consumers by business users through online intermediation services, or to websites indexed for **relevance given to consumers search results** by online search engines, as presented, organised or communicated to those consumers by the providers of online intermediation services or by providers of online search engines, respectively, irrespective of the technological means used for such presentation, organisation or communication;
- (9) 'control' means ownership of, or the ability to exercise decisive influence over, an undertaking, within the meaning of Article 3(2) of Council Regulation (EC) 139/2004¹²;
- (10) 'terms and conditions' means all terms, **and** conditions, ~~clauses and other information~~ **or specifications**, 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.
- (11) 'mediation' means any structured process as defined in Article 3(a) of Directive (EU) 2008/52 of the European Parliament and of the Council on certain aspects of mediation in civil and commercial matters.**
- (12) 'durable medium' means any instrument which enables business users to store information addressed personally to them in a way accessible for future reference and for a period of time adequate for the purposes of the information and allows the unchanged reproduction of the information stored.**

¹² Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation) (OJ L 24, 29.1.2004, p. 1).

Article 3

Predictability of Terms and conditions

1. Providers of online intermediation services shall ensure that their terms and conditions:
 - (a) are drafted in **plain and intelligible** ~~clear and unambiguous~~ language;
 - (b) are easily available for business users at all stages of their commercial relationship with the provider of online intermediation services, including in the pre-contractual stage;
 - (c) set out the ~~objective~~ grounds for decisions to suspend or terminate, in whole or in part, the provision of their online intermediation services to business users.
2. ~~Terms and conditions, or specific provisions thereof, which do not comply with the requirements of paragraph 1 shall not be binding on the business user concerned where such non-compliance is established by a competent court.~~
3. Providers of online intermediation services shall notify **on a durable medium** to the business users concerned any ~~envisaged~~ **proposed** modification of their terms and conditions.

The ~~envisaged~~ **proposed** 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~~ **proposed** modifications.

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

- ~~3. Modifications to terms and conditions implemented by a provider of online intermediation services contrary to the provisions of paragraph 3 shall be null and void. **Terms and conditions, or specific provisions thereof, which do not comply with the requirements of paragraph 1 as well as modifications to terms and conditions implemented by a provider of online intermediation services contrary to the provisions of paragraph 2 shall be non-binding on the business user concerned.**~~
4. ~~Paragraph 3 shall not apply w~~ **Where a provider of online intermediation services is subject to a legal regulatory obligation which requires it to modify its terms and conditions in a manner which does not allow it to respect the notice period referred to in the second subparagraph of paragraph 3 2, this notice period shall not apply.**

Article 4

Suspension and termination

- ~~1. Where a provider of online intermediation services decides to suspend or terminate, in whole or in part, the provision of its online intermediation services to a given business user, it shall provide the business user concerned, undue delay, with a statement of reasons for that decision.~~
- ~~2. The statement of reasons referred to in paragraph 1 shall contain a reference to the specific facts or circumstances that led to the decision of the provider of online intermediation services, as well as a reference to the applicable grounds for that decision referred to in Article 3(1)(c).~~

- 1. Where a provider of online intermediation services decides to suspend the provision of its online intermediation services to a given business user in relation to individual goods or services offered by that business user, it shall provide the business user concerned, prior to or at the time of the suspension taking effect, with a statement of reasons for that decision on a durable medium.**
- 2. Where a provider of online intermediation services decides to terminate the provision of the whole of its online intermediation services to a given business user, it shall provide the business user concerned, at least 30 days prior to the termination taking effect, with a statement of reasons for that decision on a durable medium.**
- 3. The notice period in paragraph 2 shall not apply where a provider of online intermediation services:**
 - (a) is subject to a regulatory obligation which requires it to terminate the provision of the whole of its online intermediation services to a given business user in a manner which does not allow it to respect this notice period, or**
 - (b) exercises a right of termination under an imperative reason pursuant to national law which is in compliance with Union law.**

The provider of online intermediation services shall provide the business user concerned, without undue delay, with a statement of reasons for that decision on a durable medium.

4. The statement of reasons referred to in paragraph 1 and 2 shall contain a reference to the specific facts or circumstances that led to the decision of the provider of online intermediation services, as well as a reference to the applicable grounds for that decision referred to in Article 3(1)(c).

Article 5

Ranking

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

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

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

- 2a. **Where the main parameters include the possibility to influence ranking against any direct or indirect remuneration paid by business users or corporate website users to the respective provider, that provider shall also set out a description of those possibilities and of the effects of such remuneration on ranking in accordance with the requirements set out in paragraphs 1 and 2.**

3. The descriptions referred to in paragraphs 1, ~~and 2~~ **and 2a** shall be sufficient to enable the business users or corporate website users to obtain an adequate understanding of whether, and if so how and to what extent, the ranking mechanism takes account of the following:
- (a) the characteristics of the goods and services offered to consumers through the online intermediation services or the online search engine;
 - (b) the relevance of those characteristics for those consumers;
 - (c) as regards online search engines, the design characteristics of the website used by corporate website users.
4. ~~Providers of online intermediation services and providers of online search engines shall, when complying with the requirements of this Article, not be required to disclose any trade secrets as defined in Article 2(1) of Directive (EU) 2016/943.~~

Article 6

Differentiated treatment

1. Providers of online intermediation services shall include in their terms and conditions a description of any differentiated treatment which they give, or may give, in relation to, on the one hand, goods or services offered to consumers through those online intermediation services by either that provider itself or any business users which that provider controls and, on the other hand, other business users.
2. The description referred to in paragraph 1 shall cover ~~at least~~ **in particular**, where applicable, any differentiated treatment through specific measures taken by, or the behaviour of, the provider of the online intermediation services relating to any of the following:

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

access to, or conditions for use of, **or any direct or indirect remuneration charged for the use of** services that are directly connected or ancillary to the online intermediation services concerned.

Article 7

Access to data

1. Providers of online intermediation services shall include in their terms and conditions a description of the technical and contractual access, or absence thereof, of business users to any personal data or other data, or both, which business users or consumers provide for the use of the online intermediation services concerned or which are generated through the provision of those services.
2. Through the description referred to in paragraph 1, providers of online intermediation services shall adequately inform business users ~~at least~~ **in particular** of the following:
 - (a) whether the provider of online intermediation services has access to personal data or other data, or both, which business users or consumers provide for the use of those services or which are generated through the provision of those services, and if so, to which categories of such data and under what conditions **and if that data is provided to third parties**;

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

Article 8

Restrictions to offer different conditions through other means

1. Where, in the provision of their services, providers of online intermediation services **in accordance with national law** restrict the ability of business users to offer the same goods and services to consumers under different conditions through other means than through those services, they shall include grounds for that restriction in their terms and conditions and make those grounds easily available to the public. Those grounds shall include the main economic, commercial or legal considerations for those restrictions.
2. The obligation set out in paragraph 1 shall not affect any prohibitions or limitations in respect of the imposition of such restrictions that result from the application of other Union rules or from national rules that are in accordance with Union law and to which the providers of the online intermediation services are subject.

Article 9

Internal complaint-handling system

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

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

- (a) alleged non-compliance by that provider with any legal obligations laid down in this Regulation which ~~negatively~~ affects the complainant;
 - (b) technological issues which relate directly to the provision of online intermediation services, and which affect the complainant ~~in a non-negligible manner~~;
 - (c) measures taken by, or behaviour of, that provider which relate directly to the provision of the online intermediation services, and which ~~negatively~~ affect the complainant ~~in a non-negligible manner~~.
2. As part of their internal complaint-handling system, providers of online intermediation services shall:
 - (a) duly consider complaints lodged and the follow-up which they may need to give to the complaint in order to adequately address the issue raised, in a manner which is proportionate to the importance and complexity of that issue;
 - (b) process complaints swiftly and effectively, taking into account the importance and complexity of the issue raised;
 - (c) communicate to the complainant the outcome of the internal complaint-handling process, in an individualised manner and drafted in **plain and intelligible** ~~clear and unambiguous~~ language.

3. Providers of online intermediation services shall ~~include~~ **provide** in their terms and conditions all relevant information relating to the access to and functioning of their internal complaint-handling system.
4. Providers of online intermediation services shall annually establish and make easily available to the public information on the functioning and effectiveness of their internal complaint-handling system.

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

5. The provisions of this Article shall not apply to providers of online intermediation services that are small enterprises within the meaning of Article 2(2) of the Annex to Recommendation 2003/361/EC¹³.

¹³ Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5/2003, p.36).

Article 10

Mediation

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

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

- 1a. Providers of online intermediation services and their business users shall be free to jointly identify any mediator of their choice not identified in the terms and conditions of the provider of online intermediation services concerned after a dispute has arisen between them.**

2. The mediators referred to in paragraph 1 shall meet the following requirements:
 - (a) they are impartial and independent **of both the provider of online intermediation services and the business user concerned**;
 - (b) their mediation services are affordable for ~~an average~~ **a** business user of the online intermediation services concerned;

- (c) they are capable of providing their mediation services in the language of the terms and conditions which govern the contractual relationship between the provider of online intermediation services and the business user concerned;
 - (d) they are easily accessible either physically in the place of establishment or residence of the business user, or remotely using communication technologies;
 - (e) they are capable of providing their mediation services without undue delay;
 - (f) they have a sufficient understanding of general business-to-business commercial relations, allowing them to contribute effectively to the attempt to settle disputes.
3. Providers of online intermediation services **and business users** shall engage in good faith ~~in~~ **if they** attempt to reach an agreement through the mediation of any of the mediators which they identified in accordance with paragraph 1, with a view to reaching an agreement on the settlement of the dispute.
 4. Providers of online intermediation services shall bear a reasonable proportion of the total costs of mediation in each individual case. A reasonable proportion of those total costs shall be determined, on the basis of a suggestion by the mediator, by taking into account all relevant elements of the case at hand, in particular the relative merits of the claims of the parties to the dispute, the conduct of the parties, as well as the size and financial strength of the parties relative to one another. ~~However, providers of online intermediation services shall in any case bear at least half of the total cost.~~
 5. Any attempt to reach an agreement through mediation on the settlement of a dispute in accordance with this Article shall not affect the rights of the providers of the online intermediation services and of the business users concerned to initiate judicial proceedings at any time during or after the mediation process.

5a. The obligation set out in Paragraph 1 shall not apply to providers of online intermediation services that are small enterprises within the meaning of Article 2 (2) of the Annex to Recommendation 2003/361/EC.

Article 11

Specialised mediators

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

Article 12

Judicial proceedings by representative organisations or associations and by public bodies

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

2. Organisations or associations shall have the right referred to in paragraph 1 only where, ~~at the time of bringing the action,~~ they meet all of the following requirements:
- (a) they are properly constituted according to the law of a Member State;
 - (b) they pursue objectives that are in the collective interest of the group of business users or corporate website users that they represent **on a sustained basis**;
 - (c) they are of a non-profit making character;
 - (d) their decision-making is not unduly influenced by any third-party providers of financing, and that they do not accept financing from any providers of online intermediation services or of online search engines.**

To this end, organisations or associations shall disclose fully and publicly information on the membership, governance structure and finances.

- 2a.** 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.

2b. Member States may designate:

- (a) **organisations or associations established in their Member State that meet at least the requirements of paragraph 2 upon their request;**

(b) public bodies set up in their Member State that meet the requirements of paragraph 2a,

that are granted the right referred to in paragraph 1 and shall communicate to the Commission their name and purpose.

2c. The Commission shall draw up a list of the organisations, associations and public bodies according to paragraph 2b, with the specification of their purpose. This list shall be published in the *Official Journal of the European Union*; changes to this list shall be published without delay and the updated list shall be published every six months.

2d. The courts shall accept this list as proof of the legal capacity of the organisation, association or public body, without prejudice to the right to examine whether the purpose of the claimant justifies its taking action in a specific case.

2e. If a Member State or the Commission raises concerns regarding the compliance by an organisation or association with the criteria laid down in paragraph 2, or, regarding the compliance by a public body with the criteria laid down in paragraph 2a, the Member State that designated that organisation, association or public body shall investigate the concerns and, where appropriate, revoke the designation if one or more of the criteria are not complied with.

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

Article 12a

Enforcement

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

Article 13

Codes of conduct

1. The Commission shall encourage the drawing up of codes of conduct by providers of online intermediation services and by organisations and associations representing them, **that are** intended to contribute to the proper application of this Regulation, taking account of the specific features of the various sectors in which online intermediation services are provided, as well as of the specific characteristics of micro, small and medium-sized enterprises.
2. The Commission shall encourage the drawing up of codes of conduct by providers of online search engines and by organisations and associations representing them, **that are specifically** intended to contribute to the proper application of Article 5(2) and (3).

Article 14

Review

1. By [*date: three years after the date of entry into force*], and subsequently every three years, the Commission shall evaluate this Regulation and report to the European Parliament, the Council and the European Economic and Social Committee.
2. The first evaluation of this Regulation shall be carried out, in particular, with a view to assessing the compliance with, and impact on the online platform economy of, the obligations laid down in Articles 5, 6, 7 and 8, and whether additional rules, including regarding enforcement, may be required to ensure a fair, predictable, sustainable and trusted online business environment within the internal market.
3. Member States shall provide any relevant information **they have** that the Commission may require for the purposes of drawing up the report referred to in paragraph 1.
4. In carrying out the evaluation of this Regulation, the Commission shall take into account **inter alia** 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. **The Commission shall ensure that the opinions of the Member States and the relevant stakeholders are duly taken into account in the preparation of the evaluation report.** It shall also take into account the content and functioning of any codes of conduct referred to in Article 13, where appropriate.

Article 15

Entry into force and application

1. This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.
2. It shall apply from [date: ~~six~~ ***twelve*** months following the day of its publication].

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President
