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NOTE

From:	Presidency/General Secretariat of the Council
To:	Permanent Representatives Committee
No. prev. doc.:	13876/18
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 the trilogue

I. INTRODUCTION

1. On 26 April 2018, the Commission presented a proposal for a Regulation of the European Parliament and of the Council on promoting fairness and transparency for business users of online intermediation services¹. The proposal is based on Article 114 of the Treaty on the Functioning of the European Union (TFEU).
2. The proposed 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.

¹ Doc. 8413/18 + ADD1.

II. STATE OF PLAY

3. The examination of the proposal by the Working Party on Competitiveness and Growth started on 4 May 2018 and the Council's position on this proposal, which was forged from the outcome of these meetings, was reflected in the text of the General Approach, which was then adopted by the Competitiveness Council in November 2018. On the European Parliament's side, the IMCO report was adopted during the European Parliament (EP) plenary session in December 2018. Immediately afterwards, negotiations between the two co-legislators began and the first informal trilogue was held on 12 December 2018.
4. Following further work at technical level, the Presidency received a revised mandate from the Committee of Permanent Representatives on 23 January 2019 in order to continue tripartite negotiations in the second informal trilogue, which took place in the Council on 28 January 2019.
5. During the tripartite discussions, a considerable amount of work was relegated to technical level with the aim of exploring potential compromise solutions to areas of divergence in the text for subsequent agreement at political level. The outcome of this technical level work is now reflected in the latest compromise text presented by the Presidency in the annexed 4-column document.
6. Now, in view of the upcoming third informal trilogue, which will take place in two parts on both 12 and 13 February 2019, the Presidency would like to explore additional areas where flexibility can be found among Member States in order to facilitate compromise between the co-legislators with a view to reaching an agreement in first reading.
7. The Committee of Permanent Representatives (COREPER) is invited to examine the Presidency's suggested amendments, focusing particularly on the spirit in which they are intended, rather than on specific wordings contained therein. These suggested amendments are set out in the annexed four-column table, most significant of which are elaborated in Section III.

III. POLITICAL ISSUES

8. Amendments suggested by the Presidency with respect to the General Approach and/or the Coreper's revised mandate of 23 January 2019:
- a) **Subject matter and scope** (Article 1): In the spirit of compromise, the Presidency suggests to introduce the concept of fairness in paragraph 1 as a general principle, taking inspiration from the title of the Regulation. The Presidency would continue to defend the reference to the proper functioning of the internal market in paragraph 1 and to maintain the General Approach in paragraph 3. In addition, Member States are invited to agree on preserving the original title, as was originally proposed by the Commission, as a compromising gesture to the Parliament and their attachment to the notion of *fairness*.
 - b) **Unilaterally determined contracts** (Article 2(10)): In order to assuage the Parliament's concerns related to contracts being genuinely negotiated or not, the Presidency suggests to maintain the text of the General Approach, but to clarify the intentions behind the Parliament's amendment in Recital 12 in order to better define *unilaterally determined contracts*.
 - c) **Restrictions, suspension and termination** (Article 4): The Article has been drafted in a way to provide the affected business users with the possibility to clarify the facts and circumstances via the internal complaint-handling system. In addition, if the decision to restrict, suspend or terminate is revoked, business users should be reinstated by the provider of online intermediation services, including any access to data, without undue delay. To better clarify this new text, Recital (16) has been modified accordingly.

- d) **Ranking** (Article 5): In paragraph 1, the Presidency invites the Member States to show flexibility on the possible re-introduction of the wording "*the reasons for*", taking into account also the newly proposed text in paragraph 4 addressing trade secrets, where the text would read "*This Article shall be without prejudice to*" the Trade Secrets Directive. In addition, this paragraph 4 would also specifically state that providers of online intermediation services and of online search engines are not required to publicly disclose algorithms. As for the Parliament's amendment on disclosing whether results have been influenced by differentiated treatment, the compromise proposal should be considered in line with the relevant Parliament amendment in Article 6, as well as with the overall compromise package related to the extension of the scope in Articles 6 and 7 to include online search engines. The Presidency also intends to accept the Parliament's compromise proposal to move the amendment on non-arbitrary application of ranking, out of the operative part of the text. Finally, the Presidency invites the Council to show flexibility in paragraph 4a by accepting the Parliament's text that the Commission should prepare relevant guidelines on transparency requirements.
- e) **Access to data** (Article 7): This Article would remain unchanged, however, the text of the corresponding Recital (20) has been modified in order to take account of the Parliament's concerns related to access to data and data protection, which were initially introduced in the operative part of their position. The extension of Article 7 to providers of online search engines, as suggested by the Parliament in its position, is therefore renounced in exchange for an extension to online search engines in Article 6. Member States are, however, invited to comment on their possible flexibility regarding the wording from the Parliament's position "*and if that data is provided to third parties, including within the corporate structure of the provider*".
- f) **Enforcement** (new Articles 12a and 12b): In Article 12a, the Presidency proposes to combine previous paragraphs 1 and 2 into a single paragraph. In addition, it maintains the requirement for Member States to ensure "*adequate and effective enforcement*" of this Regulation, leaving the specific means by which this shall be accomplished at each Member State's discretion. In Article 12b, the Presidency proposes new wording, as a matter of compromise, which outlines the role of Member States in the monitoring process as managed by the Commission, while at the same time focusing on avoiding unnecessary administrative burden for the Member States.

g) **Unfair trading practices** (Article 3(1)(-a), new 6a, new Annex 1): After redrafting the individual unfair trading practices set out in the new Annex 1 and taking into consideration Member States' concerns and also without exceeding the spirit of the General Approach, the Presidency proposes to transpose some of the unfair trading practices to different articles of the operative part of the text with the sole objective of extending transparency requirements, namely: point (b) on retroactive contract clauses and point (d) on the right to terminate would be moved to Article 3, whereas point (c) on the use of data would be placed within Article 7. Moreover, Member States are invited to examine possible compromise wordings, set out below, which could be foreseen within the framework of an overall compromise. The Presidency considers that these compromise wordings correspond reasonably to the Parliament's concerns on ensuring fairness:

- i. Providers of online intermediation services shall not impose retroactive changes to terms and conditions, excepting when they are required to respect a regulatory obligation or when the retroactive changes are beneficial for the business users.*
- ii. Terms and conditions shall not make it unduly difficult for business users to exercise their contractual right to terminate their relationship with an online intermediation service.*
- iii. Providers of online intermediation services shall not impose unfair provisions which – taken individually or in connection with other provisions of terms and conditions – create, to the detriment of the business user and contrary to the requirement of good faith, a significant imbalance between the rights and obligations of the parties.*

- h) **Provisions linked to operating systems** (Recital 3a, Articles 1(2aa), Articles 2(3a) and (3b), Article 2a): The Parliament introduced certain amendments addressing operating systems of mobile devices and connected speakers into the scope of the Regulation. The Parliament's first concern is that those providers who control app stores would be able to change the conditions applicable to operating systems, thus potentially circumventing the provisions covering terms and conditions within this Regulation. Their second concern is that providers who control both app stores and the underlying operating systems, as well as their technical interface system, might be able to give preference to their own apps. Such practices could, in their view, lead to the circumvention of this Regulation.

The Presidency proposes to defend the General Approach taking into account the clarifications in Recital (19) (as well as in Article 6): “*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.*” The reference to technical means would cover possible situations envisaged by the Parliament, as well as those related to technical interfaces or other features enabled by means of application programming interfaces (APIs) provided by operating systems. Furthermore, since no impact assessment has been carried out on this issue, the issue could be addressed in the review clause.

A possible fall-back compromise solution could be to further clarify transparency requirements in Article 6 (*Differentiated Treatment*) in order to better address the specific concerns of the Parliament without extending the scope of the Regulation. The possible amendment in the modified Article 6(2d) would specify that access to services in fact refers to “*services available to business users*”. Other similar wording options could eventually be accommodated in the article and/or in a recital.

- i) **Final Provisions** (Articles 14 and 15): In Articles 14 and 15 on the review and the entry into force, respectively, the Presidency invites Member States to show flexibility within the framework of an overall compromise package.

IV. CONCLUSION

9. The Presidency invites the Member States to demonstrate their flexibility when considering the compromise texts of political issues explained in Section III, with a view to concluding the negotiations between the co-legislators.
 10. In light of this, the Permanent Representatives Committee is invited to mandate the Presidency to continue tripartite negotiations at the third informal trilogue on 12 and 13 February 2019 on the basis of the Presidency compromise suggestions as set out in the last column of the annexed table.
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date: 05/02/2018, P2B 2nd revised mandate_CRP 8.01.19

Four columns document: **Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on promoting fairness and transparency for business users of online intermediation services (Text with EEA relevance)**

Cell in green: The text can be deemed as already agreed

Cell in yellow: The issue needs further discussion at technical level

Cell in red: The issue needs further discussion in depth at the trialogue meetings

Note: Differences between IMCO's position and the Commission's proposal are highlighted in ***Bold/italics***. **Bold underline** in the Council column indicates where the Council has amended Commission's text. Deletions are marked with a ~~striketrough~~.

Compromise wording is highlighted in grey.

		COMMISSION'S PROPOSAL ²	EP AMENDMENTS ³	COUNCIL AMENDMENTS ⁴	COMPROMISE PROPOSALS
	1	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on promoting fairness and transparency for business users	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on promoting fairness and transparency for business	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on promoting fairness <u>by</u>	Flexibility towards EP

² 2018/0112 (COD).

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		of online intermediation services	users of online intermediation services	<u>means of and</u> transparency for business users of online intermediation services <u>and for corporate website users in relation to online search engines</u>	
	2	(Text with EEA relevance)	(Text with EEA relevance)	(Text with EEA relevance)	
	3	THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION	THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,	THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION	
	4	Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof	Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof	Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof	
	5	Having regard to the proposal from the European Commission,	Having regard to the proposal from the European Commission,	Having regard to the proposal from the European Commission,	
	6	After transmission of the draft legislative act to the national parliaments,	After transmission of the draft legislative act to the national parliaments,	After transmission of the draft legislative act to the national parliaments,	
	7				

		Having regard to the opinion of the European Economic and Social Committee ¹ , ¹ OJ C , , p. .	Having regard to the opinion of the European Economic and Social Committee,	Having regard to the opinion of the European Economic and Social Committee,	
	8	Having regard to the opinion of the Committee of the Regions ² ² OJ C , , p. .	Having regard to the opinion of the Committee of the Regions, <i>After consulting</i>	Having regard to the opinion of the Committee of the Regions,	
	9	Acting in accordance with the ordinary legislative procedure,	Acting in accordance with the ordinary legislative procedure,	Acting in accordance with the ordinary legislative procedure,	
	1	Whereas:	Whereas:	Whereas:	
	1	(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	(1) Online intermediation services are key enablers of entrepreneurship <i>and new business models</i> , 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	(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	<i>24/01/2019: Provisional compromise proposal</i> (1) Online intermediation services are key enablers of entrepreneurship <i>and new business models</i> ,

		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.	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 as well as by offering competitive pricing online. <i>However, the potential legal uncertainty that may arise from the emergence of new technologies should be addressed.</i> [Am. 1]	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.	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 as well as by contributing to offering competitive pricing online.
	1	(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	(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,	(2) Online intermediation services can be crucial for the commercial success of undertakings who use such services to reach consumers. <u>To fully exploit the benefits of the platform economy, it</u>	24/01/2019: EP to redraft

	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.	fuelled by strong data-driven indirect network effects, lead to an increased dependence of such business users, including <i>the self-employed and micro, small and medium-sized enterprises</i>, on those services in order for them to reach consumers. Given that increasing dependence, <i>which could also affect large businesses in addition to microenterprises and small and medium-sized enterprises</i>, the providers of those services often have superior bargaining power. which enables <i>If this superior bargaining power is misused, it can enable</i> 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 <i>but significantly, also to those</i> of consumers in the Union. <i>Consumers have embraced the online platform economy and a competitive, fair, and transparent online ecosystem</i>	<u>is therefore important that undertakings can trust platforms with which they enter into commercial relationships. This is important mainly because</u> 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	
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		<i>where companies behave responsibly is also essential for consumer welfare. Where dominant online intermediation services become gatekeepers of information, choice and prices, the consumers also suffer. Moreover, lack of transparency and legal uncertainty in the online platform economy, including in business to business relations, could diminish consumer trust in the online economy. This Regulation should improve the fairness and transparency for business users of online intermediation services, which is ultimately to the benefit of consumers. However, the direct consequences to consumers of new business models and technological developments are addressed in Commission Proposal for a Directive of the European Parliament and of the Council amending Council Directive 93/13/EEC of 5 April 1993, Directive</i>	and, indirectly, also of consumers in the Union.	
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			<i>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</i>[1]. [Am. 2] [1] COM(2018)0185 final (COD(2018)0090).		
1	(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	(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	(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	24/01/2019: EP to redraft	

		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.	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 <i>disrupt normal competition on the market and</i> that can be harmful to the legitimate interests of corporate website users and, indirectly, also <i>but significantly, also to those</i> of consumers in the Union. [Am. 3]	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.	
	13A		<i>(3a) In some cases, operating systems may hold a role as intermediaries between business users and consumers. Since the definition of online intermediation services in</i>		Subject to the political agreement on OS issue

			<i>this Regulation should be understood to be technologically neutral and to capture services regardless of their degree of integration with the software and any hardware used to provide them, where operating systems act as online intermediation services within the meaning of this Regulation, the providers of those operating systems should also be covered by the obligations laid down on providers of online intermediation services in this Regulation. [Am. 4]</i>		
	1	(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	(4) The dependence of nature of the relationship between business users on and online intermediation services may also lead to situations 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	(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	24/01/2019: Council to check keeping EP text Flexibility (4) The dependence of nature of the relationship between business users on and online intermediation services may also lead to situations leads to a

		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.	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. [Am. 5]	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.	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.
	1	(5) Online intermediation services and online search engines, as well as the commercial transactions facilitated by those services, have an intrinsic cross-border	(5) Online intermediation services and online search engines, as well as the commercial transactions facilitated by those services, have an intrinsic cross-border	(5) Online intermediation services and online search engines, as well as the commercial transactions facilitated by those services, have an intrinsic	24/01/2019: <i>Further discussion needed</i>

	potential and are of particular importance for the proper functioning of the Union's internal market in today's economy. The potentially unfair and harmful trading practices of certain providers of those services in respect of business users and corporate website users hamper the full realisation of that potential and negatively affect the proper functioning of the internal market. In addition, the full realisation of that potential is hampered, and the proper functioning of the internal market is negatively affected, by diverging laws of certain Member States which, with a varying degree of effectiveness, regulate those services, while other Member States are considering adopting such laws.	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, <i>who abuse their position</i> in respect of business users and corporate website users <i>and the lack of adequate redress mechanisms</i> hamper the full realisation of that potential and negatively affect the proper functioning of the internal market <i>and the emergence of new market players</i>. 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. [Am. 6]	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 <u>and the lack of effective redress mechanisms</u> 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	
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			considering adopting such laws.	
15A			(5a) A targeted set of mandatory rules <u>on transparency</u> 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 <u>should be</u> afforded appropriate transparency as well as effective redress possibilities throughout the Union <u>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</u>	24/01/2019: <i>Further discussion needed</i>

				<u>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.</u>	
	1	(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	(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 <i>incentives to promote fair and proportionate business behaviour and</i> transparency, <i>especially</i> as regards the ranking of corporate website	(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	Flexibility provided to keep the second part of the GA text.

	rules should be such as to safeguard the important innovation potential of the wider online platform economy.	users in the search results generated by online search engines, <i>including voice assistance services</i>. At the same <i>time</i>, those rules should be such as to <i>recognize and</i> safeguard the important innovation potential of the wider online platform economy <i>and allow for healthy competition leading to increased consumer choice</i>. [Am. 7]	website users in the search results generated by online search engines. At the same <u>time</u>, those rules should be such as to safeguard the important innovation potential of the wider online platform economy. <u>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.</u>	
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1	(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	(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. <i>In accordance with Regulation (EC) No 1215/2012 of the European Parliament and of the Council^[1] and Regulation (EC) No 593/2008 of the European Parliament and of the Council^[2], this would mean that the online</i>	(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	<i>31/01/2019: Proposal to redraft and include 1st part of EP AM</i> <i>EC to redraft and suggest placing for 2nd part of EP AM</i> <i>Flexibility. Possible compromise wording:</i> <i>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</i>

	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.	<i>intermediation services and online search engines have directed activities to consumers located in one or more Member States, irrespective of their location within the Union.</i> 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. <i>The rules relating to choice of law and choice of court in contractual matters in international and Union law have been conceived in relation to the typical commercial contracts</i>	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. <u>Furthermore, this Regulation should apply irrespective of the law otherwise applicable to a contract.</u>	<i>established in the Union. Secondly, the business users or corporate website users should, through the provision of those services, offer their goods or services to consumers located in the Union at least for part of the transaction. In accordance with Regulation (EC) No 1215/2012 of the European Parliament and of the Council[1] and Regulation (EC) No 593/2008 of the European Parliament and of the Council[2], this would mean that the online intermediation services and the online search engines and the business users have directed activities to consumers located in one or more Member States, irrespective of</i>
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		<i>negotiated to the letter between the parties and their legal representatives. It can be questioned to what extent these rules are appropriate in relation to the specific situation of agreements for platforms and in general to agreements in the digital era. This question ought to be given further consideration.</i> [Am. 8] [1] Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, (OJ L 351, 20.12.2012, p. 1). [2] Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I), (OJ L 177, 4.7.2008, p. 6).		<i>their location within the Union. Such consumers should be located in the Union, but do not need to have their place of residence in the Union nor have the nationality of any Member State. Accordingly, this Regulation should not apply where the business users or corporate websites users are not established in the Union or where they are established in the Union but where they use online intermediation services or online search engines to offer goods or services exclusively to consumers located outside the Union or to persons who are not consumers</i>
1	(8) A wide variety of business-to-consumer commercial	(8) A wide variety of business-to-consumer	(8) A wide variety of business-to-consumer	24/01/2019: <i>Further discussion</i>

	relations are intermediated online by providers operating multi-sided services that are essentially based on the same ecosystem-building business model. In order to capture the relevant services, online intermediation services should be defined in a precise and technologically-neutral manner. In particular, the services should consist of information society services, which are characterised by the fact that they aim to facilitate the initiating of direct transactions between business users and consumers, irrespective of whether the transactions are ultimately concluded either online, on the online portal of the provider of the online intermediation services in question or that of the business user, or offline. In addition, the services should be provided on the basis of contractual relationships both between the providers and business users and between the providers and the consumers. Such a contractual relationship should	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, <i>meaning that there is no requirement for any contractual relationship between the business users and consumers as a</i>	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	<i>needed, EP to redraft together with Article 2(2)(b)</i> <i>Flexibility, text in relation to art. 2.2.b) to be re-drafted by EP</i>
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	be deemed to exist where both parties concerned express their intention to be bound in an unequivocal and verifiable manner, without an express written agreement necessarily being required.	<i>precondition for an online intermediation service falling within the scope of this Regulation. Services where the facilitating of the initiating of direct transactions between those business users and consumers is of marginal character only, meaning that even if it might in a limited number of cases be possible to interpret the service as having facilitated the initiation, a direct transaction between certain business users and consumers, should not be included, as this would not be the aim of the service. Where services habitually facilitate such transactions, the facilitating of initiating of direct transactions might not be understood to be of marginal character only.</i> In addition, the services should be provided on the basis of contractual relationships both between the providers and business users and between the providers and the	<u>or in fact not at all.</u> In addition, the services should be provided on the basis of contractual relationships between the providers and business users <u>which offer goods or services to consumers</u> 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 <u>on a durable medium,</u> without an express written agreement necessarily being required.	
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		consumers. Such a contractual relationship should be deemed to exist where both parties concerned express their intention to be bound in an unequivocal and verifiable manner, without an express written agreement necessarily being required. <i>Such a contractual relationship between the providers of online intermediation services and consumers should also be deemed to exist in cases where the services are supplied to the consumer against the provision of personal data or other data by the consumer.</i> [Am. 9]		
1	(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	(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 <i>such as application stores, voice assistance services,</i> and online social media services.	(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, <u>such as application</u>	24/01/2019: <i>There are a number of similar elements in both EP and Council texts.</i> <i>References related to operating systems to be treated as political.</i> <i>EP AM in Recital 10 (row 20) regarding exclusion of pure business-to-business</i>

	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.	<i>It should apply to such services regardless of emerging or future developments altering their technological or commercial design, including for example their interaction with software operating systems.</i> 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. [Am. 10]	<u>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.</u> However, this Regulation should not apply to <u>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,</u> online advertising serving tools or and online advertising exchanges which are not provided with the aim of	<i>platforms to be combined with the drafting of this recital.</i>
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			facilitating the initiation of direct transactions and which do not involve a contractual relationship with consumers. <u>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.</u> 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	
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			services to the consumers concerned.	
19A		<i>(9a) 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, it</i>		24/01/2019: Council to check relevance from B2C perspective

		<i>should not be in the discretion of the provider of an online intermediation service to distinguish whether a user is a business user or a non-business user. Rather, the users of online intermediation services should have the possibility to express whether they are business users or not, and in the case of business users, fulfil their stricter obligations towards consumers. [Am. 11]</i>		
19B		<i>(9b) The definition of ancillary operating systems should capture operating systems which are essential for controlling a mobile device, which are closely linked to an online intermediation service and that online intermediation service controls the main channel through which application may be installed, and where the development and updating of that operating system is indirectly or directly provided or controlled by the provider of</i>		Subject to the political agreement on OS issue

			<i>the linked online intermediation service. This definition of ancillary operating systems should apply to services regardless of emerging or future developments altering their technological or commercial design, including for example the use of voice control. [Am. 12]</i>		
2	(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.	(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. <i>For the purposes</i>	(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	<i>28/01/2019:</i> <i>EP amendment to be included in the final redrafting of Recital 9 (row 19) where the Council has a similar AM.</i> <i>Recital 10 to be left as EC text:</i> (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	

			<i>of this Regulation, therefore, online intermediation services solely directing or targeting offers of goods and services from businesses to other businesses are not included in the scope, because there is no direct consequence on consumers.</i> [Am. 13]	outside their trade, business, craft or profession.	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.
	2	(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 ³ . ³ Directive (EU) 2016/1148 of the European Parliament and of the Council concerning measures for a high common level of security of network and	(11) For reasons of consistency, The definition of online search engine used in this Regulation should be aligned with broader than the definition used in Directive (EU) 2016/1148 of the European Parliament and of the Council ³ . Considering the quick pace of innovation, the definition should be technology-neutral. In particular, the definition should be understood to also	(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 ³ . ³ Directive (EU) 2016/1148 of the	28/01/2019: Provisional compromise proposal confirmed: (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

	information systems across the Union (OJ L 194, 19.7.2016, p. 1).	<i>encompass vocal requests.</i> [Am. 14] 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).	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).	European Parliament and of the Council ³ : <i>Considering the quick pace of innovation, the definition of online search engine used in this Regulation should be technology-neutral. In particular, the definition should be understood to also encompass vocal requests.</i>
2	(12) In order to effectively protect business users where needed, this Regulation should apply where the terms and conditions of a contractual relationship, regardless of their name or form, are not individually negotiated by the parties to them. Whether or not terms and conditions were individually negotiated should be determined on the basis of an overall assessment, whereby the fact that certain provisions thereof may have been individually negotiated is, in itself, not decisive.	(12) In order to effectively protect business users where needed , this Regulation should apply where <i>to the terms and conditions of a contractual relationship between providers of online intermediation services and business users</i> , 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	(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 <u>unilaterally determined</u> individually negotiated by the <u>provider of online intermediation services</u> parties to them. Whether or not terms and conditions were <u>unilaterally determined</u> individually negotiated	<i>24/01/2019:</i> <i>Marked as red</i> <i>Possible compromise solution:</i> <i>(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 unilaterally</i>

		been individually negotiated is, in itself, not decisive. [Am. 15]	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.	<i>determined by the provider of online intermediation services Whether or not terms and conditions were unilaterally determined negotiated should be evaluated on the basis of an overall assessment, whereby the fact that a negotiation took place, or that certain provisions thereof may have been subject to such a negotiation [and determined together by the relevant provider and business user is], in itself, not decisive.</i>
22A		<i>(12a) Providers of online intermediation services may provide or control other services or software, which could in some cases create a possibility for those software or services to be used to circumvent obligations laid</i>		Subject to the political agreement on OS issue

		<i>down on providers of online intermediation services in this Regulation. While not extending the scope of this Regulation and the requirements laid down herein to those software or services, the providers of online intermediation services should not use those software or services to circumvent any obligations laid down on online intermediation services. Control within this Regulation should be understood as being within the meaning of Article 3(2) of Council Regulation (EC) No 139/2004^[1], that is, that control should be constituted by rights, contracts or any other means which, either separately or in combination and having regard to the considerations of fact or law involved, confer the possibility of exercising decisive influence on an undertaking. This decisive influence could be exercised in particular by ownership,</i>		
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		<i>the right to use all or part of the assets on an undertaking, or the rights or contract which confer decisive influence on the composition, voting or decisions of the organs of an undertaking.</i> [Am. 16] [1] 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).		
2	(13) To ensure that the general terms and conditions of a contractual relationship enable business users to determine the commercial conditions for the use, termination and suspension of online intermediation services, and to achieve predictability regarding their business relationship, those terms and conditions should be drafted in clear and unambiguous language which is easily understood by an average business user. Terms and conditions should not be	(13) To ensure that the general terms and conditions of a contractual relationship enable business users to determine the commercial conditions for the use, termination and suspension of online intermediation services, and to achieve predictability regarding their business relationship, those terms and conditions should be drafted in clear and unambiguous intelligible language which is easily understood by an average	(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	24/01/2019: Marked as red See row 67

	considered to have been drafted in clear and unambiguous language where they are vague, unspecific or lack detail on important commercial issues and thus fail to give business users a reasonable degree of predictability on the most important aspects of the contractual relationship.	business user. Terms and conditions should not be considered to have been drafted in clear and unambiguous intelligible language where they are vague, unspecific or lack detail on important commercial issues and thus fail to give business users a reasonable degree of predictability on the most important aspects of the contractual relationship. <i>Moreover, language that is misleading in the choice of phrasing should not be considered clear and intelligible. [Am. 17]</i>	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.	
23A		<i>(13a) 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</i>		24/01/2019: Marked as red Subject to the final political agreement

		<i>service and the business user. Terms and conditions would not be considered to be fair and proportionate where, for example, those terms and conditions grossly deviate from good commercial conduct in the particular economic activity in which the online intermediation service operates, or go against the principles of good faith and fair dealing. In assessing these general requirements, the nature and purpose of the contract, the circumstances of the case and the usages and practices of the commercial activity should also be taken into account by the relevant enforcement authorities.</i> [Am. 18]		
23B		<i>(13b) 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</i>		24/01/2019: Marked as red Subject to the final political agreement

			<i>towards their business users regarding any additional channels and potential affiliate programmes that the online intermediation service may use to markets aid goods or services. [Am. 19]</i>		
2	(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	(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 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	(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 <u>on a durable medium</u> to	24/01/2019: EC to redraft <i>Flexibility To be taken into consideration the following:</i> <i>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,</i>	

	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.	<i>and at least 30 days in cases where the modification requires the business user to make significant technical adjustments to its goods or services to comply with the modification. The concept of a modification should not be understood to encompass those changes to terms and conditions which are of a purely administrative nature, such as a change to a phone number or an address of the provider. By way of exception, the notice periods should not apply where, and to the extent that, 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, and in cases where the provider acts to address dangers which could harm or pose security problems for the service, to</i>	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. <u>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,</u>	<i>inter alia, the receiving and storing of any type of messages, should enable business users to effectively review these modifications at a later stage.</i> <i>Also:</i> <i>There are not covered by the term ‘modification’ those changes addressing technical or security updates which do not have significant impact on business users.</i>
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		<i>their consumers or to other users, since given the diversity of content that business users distribute through online intermediation services, unforeseen dangers and practices could arise in ways that require immediate action. Business users should be entitled to terminate their agreement within 15 days from the receipt of the notice of any modification which they consider being detrimental to them. [Am. 20]</i>	<u>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.</u>	
24A		<i>(14a) In general, submitting new or updating goods or services to the online intermediation services should be considered clear affirmative action by the business user. However, since modifications of terms and conditions could in some cases require significant changes from the business user to comply with the new terms and conditions, the business users should not be</i>		<i>24/01/2019: Pending outcome of rows 73a/73b (14a) In general, submitting new goods, services or <u>software applications or updated software applications to the online intermediation services should be considered clear affirmative action by the business user.</u></i>

		<i>obliged to leave their goods and services without updates, for example on content of services, while the business user prepares for complying with the new terms and conditions. As such, in cases where the notice period is 30 days because the modifications to the terms and conditions require the business user to make significant technical adjustments to their goods or services, the notice period should not be considered automatically waived where the business user submits new or updates goods and services. The provider of online intermediation services should expect the modifications to terms and conditions to require the business user to make significant technical adjustments where, for example, entire features of the online intermediation service that business users had access to are removed or added, or where business</i>		<i>However, since modifications of terms and conditions could in some cases require significant changes from the business user to comply with the new terms and conditions, the business users should not be obliged to leave their goods and services without updates, for example on content of services, while the business user prepares for complying with the new terms and conditions. As such, in cases where the notice period is 30 days because the modifications to the terms and conditions require the business user to make significant technical adjustments to their goods or services, the notice period should not be considered</i>
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		<i>users may need to re-program their goods and services to be able to continue operating on the platform. In cases where multiple changes to terms and conditions are notified to the business users at once, only the change reasonably expected to require significant technical adjustments from the business user should be subject to the 30 days' notice period and to the exception to the automatic waiving of the notice period. [Am. 21]</i>		<i>automatically waived where the business user submits new or updates goods and services. The provider of online intermediation services should expect the modifications to terms and conditions to require the business user to make significant technical adjustments where, for example, entire features of the online intermediation service that business users had access to are removed or added, or where business users may need to re-program their goods and services to be able to continue operating on the platform. In cases where multiple changes to terms and conditions are notified to the business users at once, only the change</i>
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				<i>reasonably expected to require significant technical adjustments from the business user should be subject to the 30 days' notice period and to the exception to the automatic waiving of the notice period.</i>
2	(15) In order to protect business users it should be possible for a competent court to establish that non-compliant terms and conditions are not binding on the business user concerned, with effects ex nunc. Any such finding by a court should however only concern the specific provisions of the terms and conditions which are not compliant. The remaining provisions should remain valid and enforceable, in as far as they can be severed from the non-compliant provisions. Sudden modifications to existing terms and conditions may significantly disrupt business users' operations. In order to limit such negative effects on	(15) In order to protect business users <i>and to provide legal certainty for both sides,</i> it should be possible for a competent court to establish that non-compliant terms and conditions are not binding on the business user concerned <i>null and void,</i> with effects ex nunc. Any such finding by a court should however only concern the specific provisions of the terms and conditions which are not compliant. The remaining provisions should remain valid and enforceable, in as far as they can be severed from the non-compliant provisions. Sudden modifications to existing terms and conditions may	(15) In order to protect business users it should be possible for a competent court to establish that non-compliant terms and conditions are <u>should</u> not <u>be</u> binding on the business user concerned, with effects ex tunc nunc. <u>ex tunc</u>. Any such finding by a court <u>This</u> 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 <u>are valid and enforceable under national law and</u> can be	28/01/2019: Compromise text: (15) In order to protect business users <u>and to provide legal certainty for both sides,</u> it should be possible for a competent court to establish that non-compliant terms and conditions are <u>should</u> not be binding on the business user concerned <u>null and void,</u> with effects ex nunc. Any such finding by a court should however only concern the specific provisions of the terms

	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 <i>erga omnes</i> and <i>ex tunc</i>.	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 <i>erga omnes</i> and <i>ex tunc</i>. [Am. 22]	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 <i>erga omnes</i> and <i>ex tunc</i>. <u>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.</u>	and conditions which are not compliant. The remaining provisions should remain valid and enforceable, in as far as they can be severed from the non-compliant provisions. Sudden modifications to existing terms and conditions may significantly disrupt business users' operations. In order to limit such negative effects on business users, and to discourage such behaviour, modifications made in contravention of the obligation to provide a set notice period, should therefore be null and void, that is, deemed to have never existed with effects <i>erga omnes</i> and <i>ex tunc</i>.
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2	(16) A provider of online intermediation services can have legitimate reasons to decide to suspend or terminate the provision of its services, in whole or in part, to a given business user, including by delisting individual goods or services of a given business user or effectively removing search results. However, given that such decisions can significantly affect the interests of the business user concerned, they should be properly informed of the reasons thereof. The statement of reasons should allow business users to ascertain whether there is scope to challenge the decision, thereby improving the possibilities for business users to seek effective redress where necessary. In addition, requiring a statement of reasons should help to prevent or remedy any unintended removal of online content provided by business users which the provider incorrectly considers to be illegal content,	(16) A provider of online intermediation services can have legitimate reasons to decide to suspend, restrict or terminate the provision of its services, in whole or in part, to a given business user, including by delisting individual goods or services of a given business user or effectively removing search results. <i>It can also be under a legal obligation to remove certain content, or to suspend, restrict or terminate the provision of its services in whole or in part.</i> However, given that such decisions can significantly affect the interests of the business user concerned, they should be properly informed of the reasons thereof <i>in advance</i> of the <i>suspension, restriction or termination, except for in cases where a provider of online intermediation services is under a legal obligation to suspend, restrict or terminate its services immediately. There could</i>	(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 <u>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.</u> The statement of reasons should allow business users to ascertain whether there is scope to challenge the decision,	24/01/2019: <i>Pending outcome of Article 4</i>

	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).	<i>also be cases in which the provider of online intermediation services is not under a legal obligation, such as a product recall initiated by market surveillance authorities, to terminate its services, but where the provider nevertheless has reasonable doubts regarding the safety of a product or service, counterfeiting, fraud, or suitability of the product or service to minors. In such cases, it should be possible for the provider of the online intermediation service to act immediately to protect consumers. However, in these exceptional cases where services could be suspended, restricted or terminated immediately, the business user should in any case be provided with a statement of reasons for the suspension, restriction or termination.</i> The statement of reasons	thereby improving the possibilities for business users to seek effective redress where necessary, <u>including with a view to reinstatement of suspended goods or services</u>. 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 2018/334⁵. 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	
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⁵ — ~~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).~~

		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) <i>No 2018/334</i>[1]. <i>In some cases, the decision of the provider of an online intermediation service is based on notifications by third parties. These notifications can be abused by competitors. Commission Recommendation (EU) 2018/334 requires such notifications to be sufficiently precise and adequately substantiated to enable the hosting provider to take an informed and diligent decision in respect of the</i>	the relevant specific circumstances that led to that decision.	
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		<i>content to which the notice relates. Providers of online intermediation services should therefore be required to pass on information regarding the content of the notification to the business user in cases where a decision to suspend, restrict or terminate the provision of its services follows from a notification from a third party, in order to allow the business user to easily refute manifestly wrongful notices.</i> 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, <i>except in cases where a provider of online intermediation services is under a legal obligation not to disclose them or where a provider of online intermediation services can</i>		
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		<i>demonstrate that the business user concerned has repeatedly infringed the applicable terms and conditions, resulting in their suspension, restriction or termination. [Am. 23]</i> 1] 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).		
26A			<u>(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.</u>	24/01/2019: <i>Pending outcome of Article 4</i>

			<u>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.</u> <u>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.</u> <u>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</u>	
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			<u>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.</u>	
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2	(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	(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. <i>In cases where disclosure of all parameters in the terms and conditions is not technologically possible or would have the effect of disclosing weighting of all individual parameters, only the main parameters and the reasons for their relative importance should be presented.</i> The notion of main	(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. <u>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.</u> Providers of online intermediation services should therefore outline	Possible compromise solution: <i>(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</i>
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	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.	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. <i>When displaying the results, the online intermediation service should also disclose close to each ranking whether it has been influenced by differentiated treatment or by any direct or indirect remuneration, contractual or direct ownership relation.</i> This description should provide business users with an adequate understanding of how the ranking mechanism takes account of the characteristics of the actual	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.	<i>review mechanisms, visual highlights, or other saliency tools, or combinations thereof. Predictability requires that providers of online intermediation services determine ranking in a non-arbitrary manner. These providers 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 specific design of this transparency obligation is important for</i>
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		goods or services offered by the business user, and their relevance to the consumers of the specific online intermediation services. <i>According to the Commission Proposal for a Directive of the European Parliament and of the Council as regards better enforcement and modernisation of EU consumer protection rules, providers of online intermediation services should be required to provide consumers with information about the parameters affecting the ranking. While the information offered to the consumer should be presented in a clear and comprehensible manner that is suitable to the needs of the consumer, the information offered to the business user and the consumer should, in any event, be similar enough to ensure that both parties who offer and those who search for a good or service are able to take informed decisions based on</i>	<i>business users as it implies the identification of a limited set of parameters that are most relevant out of a possibly much larger number of parameters that have some impact on ranking. 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</i>
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		<i>transparent searches. [Am. 24]</i>		<i>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.</i>
27A			<u>(17a)</u> 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. <u>Remuneration could in this respect refer to payments made with the main or exclusive aim to</u>	Flexibility, subject to the outcome on art. 5

			<u>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.</u> <u>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</u> 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	
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			specific online intermediation services. <u>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.</u>	
2	(18) Similarly, the ranking of	(18) Similarly, the ranking of	(18) Similarly, the	Flexibility, subject to

	websites by the providers of online search engines, notably of those websites through which undertakings offer goods and services to consumers, has an important impact on consumer choice and the commercial success of corporate website users. Providers of online search engines should therefore provide a description of the main parameters determining the ranking of all indexed websites, including those of corporate website users as well as other websites. In addition to the characteristics of the goods and services and their relevance for consumers, this description should in the case of online search engines also allow corporate website users to obtain an adequate understanding of whether, and if so how and to what extent, certain design characteristics of the website used, such as their optimisation for display on mobile telecommunications devices, is taken into account. In the absence of a contractual	websites by the providers of online search engines, notably of those websites through which undertakings offer goods and services to consumers, has an important impact on consumer choice and the commercial success of corporate website users. Providers of online search engines should therefore provide a description of the main parameters determining the ranking of all indexed websites, including those of corporate website users as well as other websites. <i>In cases where disclosure of all parameters in the terms and conditions is not technologically possible or would have the effect of disclosing weighting of all individual parameters, only the main parameters and the reasons for their relative importance should be presented.</i> In addition to the characteristics of the goods and services and their relevance for consumers, this description should in the case	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 <u>and the relative importance of those main parameters as opposed to other parameters,</u> 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	the outcome on art. 5
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	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 Council⁵ 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. ⁵ Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016 on	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 requirement to disclose <i>ranking parameters</i>	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 <u>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.</u> 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. <u>Areas of websites that require</u>	
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	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).	<i>should be without prejudice to</i> Directive (EU) 2016/943 of the European Parliament and of the Council^[1] 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. <i>The existence of an up-to-date description of the main parameters would also benefit users other than corporate website users of the online search engine. In some cases, providers of online search engines may decide to influence the ranking in a specific case or delist a website from a ranking based on notifications by third parties. Unlike providers of online intermediation services, providers of online search engines cannot due to the lack of any contractual relationship between the parties be expected to notify a corporate website user</i>	<u>users to log in or register should not be understood as easily and publicly available in this sense.</u> 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.	
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		<i>directly of a delisting or change in ranking due to a notification. Nevertheless, a corporate business user should be able to inspect the notification that has led to the change in ranking or to delisting in the specific case, by investigating the contents of the notice in a publicly accessible online database. This would help to mitigate potential abuses of delisting notifications by competitors.</i> [Am. 25]		
		1] 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).		
28A		<i>(18a) In order for the business users to benefit from the information regarding ranking</i>	<u>(18a) Providers of online intermediation services or of online search engines should not be</u>	GA

		<i>parameters, the results of ranking should reflect the genuine and non-arbitrary application of those parameters and the relative importance of the parameters that the providers of online intermediation services and online search engines disclose. For example, if several business users were in a comparable situation as regards the parameters which the provider has disclosed as those determining ranking, they should be able to anticipate the ranking to reflect their similar situation vis-à-vis these parameters. [Am. 26]</i>	<u>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</u>	
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		<u>intermediation services or online search engines should therefore never lead to a refusal to disclose the main parameters determining ranking. In this regard,</u> 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 Council⁶ 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. <u>Where main parameters or information on their relative importance are considered to be trade secrets, point (b) of Article 1(2) of Directive</u>	
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⁶ 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).

			<u>(EU) 2016/943 should apply.</u>	
28B		<i>(18b) Providers of online search engines often allow the ranking of search results to be influenced against forms of remuneration paid by corporate website users. Clear details regarding such practice should be made publicly available for corporate website users and consumers to understand the effects of remuneration on ranking. Nevertheless, search results whose placement in the ranking has been influenced by forms of payment should be clearly flagged, making them easily distinguishable from other search results where remuneration was not paid. [Am. 27]</i>		Flexibility, subject to the outcome on art. 5
2	(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	(19) Where a provider of online intermediation services or a provider of online search engines itself offers certain goods or services to consumers through its own online intermediation	(19) Where a provider of online intermediation services itself offers certain goods or services to consumers through its own online intermediation services,	Subject to the outcome on art. 6

	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.	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, <i>which may give the provider an economic incentive and the ability to use its control over the online intermediation service or online search engine to provide technical or economic advantages to its own offering, or those offered through a business user which it controls, which it could deny to competing business users. Such behaviour could undermine fair competition and restrict consumer choice.</i> In such situations, in particular, it is important that the provider of online intermediation services <i>or online search engine</i> acts in a transparent manner and provides a description of any differentiated treatment, whether through legal, commercial or technical	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	
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		means, that it might give in respect of <i>such as default settings, in relation to</i> 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 <i>An online intermediation services, rather than at the level of individual goods or services offered through those services-service or online search engine provider's goods or services should be considered to compete with those of its business users where the good or service can be considered as interchangeable or substitutable by consumers using the online intermediation service. [Am. 28]</i>	those services.	
29A		<i>(19a) Nevertheless, any such differentiated treatment on online intermediation services should only be allowed if the provider of online intermediation</i>		Subject to the outcome on art. 6.2a

		<i>services is able to objectively justify it in accordance with general principles of Union law such as proportionality, legal certainty and general principles that are inferred from the Charter of Fundamental Rights. Moreover, the differentiated treatment needs to be non-discriminatory towards all other business users that offer goods or services through the online intermediation services, and the differentiated treatment does not prevent consumers from still choosing and using the goods and services of their preference, among those competing goods and services that are offered through the online intermediation service. [Am. 29]</i>		
29B		<i>(19b) Certain practices can be conclusively treated as unfair in all circumstances. These practices are listed in Annex I to this proposal. The EU Platform Observatory</i>		Subject to the outcome on art. 6a

			<i>should continuously monitor the application and effects on the market of this list of practices and recommend updates to the Commission.</i> [Am. 30]		
	3	(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	(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. <i>This Regulation requires the</i>	(20) The ability to access and use data, including personal data, can enable important value creation in the online platform economy, <u>both generally as well as for the business users and online intermediation services involved.</u> 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	Subject to the outcome on art.7

	(EU) 2016/679 of the European Parliament and of the Council.⁶ ⁶Regulation (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).	<i>online intermediation service providers to be transparent about what data they provide to their business users but does not establish any requirement to disseminate personal or non-personal data to the business users, with the exception of certain data related to business users' ratings and reviews, which the business users should be allowed to receive in an aggregate and anonymised form. In all cases, processing of personal data should comply with the 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</i> Regulation (EU) 2016/679 of the European Parliament and of the	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. <u>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.</u> Processing of personal data should comply with <u>data protection rules of the Union, notably</u> Regulation (EU) 2016/679 of the European Parliament and of the Council.⁷	
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⁷ 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).

		Council [1], Directive (EU) 2016/680 of the European Parliament and of the Council [2] and Directive 2002/58/EC of the European Parliament and of the Council [3]. [Am. 31] 1] 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). [2] 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		
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		criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ L 119, 4.5.2016, p. 89). [3] 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) (OJ L 201, 31.7.2002, p. 37).		
30A		<i>(20a) In accordance with Regulation 2016/679, a consumer has the right to receive the personal data concerning him or her, which he or she has provided to a controller such as a provider of online intermediation services, in a structured, commonly used and machine-readable format and have the right to transmit those data to</i>		<i>To check with CLS the relevance</i>

		<i>another controller, such as a business user of a provider of online intermediation services. [Am. 32]</i>		
30B		<i>(20b) Business users should be able to receive anonymised information regarding their online reputation, meaning ratings and reviews accumulated with one provider of online intermediation services, with the view to enabling business users to get a clearer understanding of their brand value and to enable them to improve their performance on the online platform. Tools should be provided for developing business users' understanding of their reputation and would be the first step to enable greater competition between business users, giving access to a wider and more informed choice to consumers. [Am. 33]</i>		<i>Subject to the outcome on art.7</i>
		<i>(20c) Several competition authorities both within and</i>		<i>No compromise.</i>

30C		<i>outside the Union have opened up investigations or declared their intention to do so concerning cases where providers of online intermediation services have used their dual position as both a marketplace and a business offering goods or services on the same marketplace to obtain or misuse a dominant position. The online intermediation service provider's access to data generated by the transactions of a business user may allow the online intermediation service provider to compete with the business user on the basis of the data. To ensure fairness, the provider of the online intermediation service should not be allowed to disclose the data generated by the transactions of a business user to third parties for commercial purposes, including within their own corporate structure, without the consent of the business user, except in cases where a</i>		
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		<i>provider of online intermediation services would be subject to a legal obligation to disclose data generated by the transactions of a business user. [Am. 34]</i>		
3	(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	(21) <i>Providers of online intermediation services should not restrict the ability of business users to offer the same goods and services to consumers under different or the same conditions through other intermediation services. In certain cases,</i> 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 <i>different</i> 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	(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	<i>Subject to the outcome on art.8</i>

		unfair commercial practices, and the application of such laws.	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 <i>and ensure that the restriction is proportionate. Nevertheless, the restriction of the ability of business users to offer goods or services to consumers under different conditions through other means than through online intermediation services, might be prohibited or limited by the Member States in their national rules adopted in accordance with the Union law. [Am. 35]</i>	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.	
	3	(22) In order to enable business users, including those whose use of the relevant online intermediation services might	(22) In order to enable business users, including those whose use of the relevant online intermediation	(22) In order to enable business users, including those whose use of the relevant online	24/01/2019: <i>Pending outcome of Article 9, Council to check</i>

	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.	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 <i>transparent, based on principles of equal treatment, non-discriminatory and</i> 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 <i>in a reasonable period of time. The online intermediation service providers may maintain the decision they have taken in force during the duration of the complaint. Any attempt to reach an agreement through the internal complaint handling-mechanism does not affect the rights of</i> In addition, ensuring that providers of 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	
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			intermediation services or business users to initiate judicial proceedings at any time during or after the complaint handling process. In addition, providers of online intermediation services should regularly publish information on the functioning and effectiveness of their internal complaint-handling system should to help business users to understand the main types of issues that can arise in the context of the provision of different online intermediation services and the possibility of reaching a quick and effective bilateral resolution. [Am. 36]	of different online intermediation services and the possibility of reaching a quick and effective bilateral resolution.	
	3	(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	(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	(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	24/01/2019: <i>Pending outcome of Article 9</i> <i>Correct reference to the Commission Recommendation 2003/361/EC to be verified</i>

	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/EC⁷.	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	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	
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		⁷Commission 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).	Recommendation 2003/361/EC⁸. [Am. 37]	any providers of online intermediation services which constitute small enterprises, in line with the relevant provisions of Commission Recommendation 2003/361/EC⁹. <u>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.</u>	
33A			<i>(23a) The use of the word ‘internal’ should not be understood as preventing the</i>		24/01/2019: Council to check Flexibility

⁸ 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).

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).~~

			<i>delegation of an internal complaint-handling system to an external service provider or other corporate structure, as long as the operator has full authority and the ability to ensure compliance of the internal complaint-handling system with the requirements in this Regulation. [Am. 38]</i>		
	3	(24) Mediation can offer providers of online intermediation services and their business users a means to resolve disputes in a satisfactory manner, without having to use judicial proceedings which can be lengthy and costly. Therefore, providers of online intermediation services should facilitate mediation by, in particular, identifying mediators with which they are willing to engage. Mediators which provide their services from a location outside the Union should only be identified where it is guaranteed that the use of those services does not in any way deprive the business	(24) Mediation can offer providers of online intermediation services and their business users a means to resolve disputes in a satisfactory manner, without having to use judicial proceedings which can be lengthy and costly. Therefore, providers of online intermediation services should facilitate mediation by, in particular, identifying mediators with which they are willing to engage. Mediators which provide their services from a location outside the Union should only be identified where it is guaranteed that the use of those services does not in any	(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 <u>at least two public or private</u> mediators with which they are willing to engage. <u>The minimum number of mediators to be identified aims at</u>	<i>24/01/2019: Pending outcome of Article 10</i>

	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.	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 <i>all identified</i> mediators should meet certain set criteria. <i>Mediators should be encouraged to resolve disputes as soon as reasonably practicable.</i> [Am. 39]	<u>safeguarding the mediators' neutrality.</u> 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. <u>Nonetheless, providers of online intermediation services and their business users should remain free to jointly identify any mediator of</u>	
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			<u>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.</u> <u>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.</u>	
3	(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	(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	(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	24/01/2019: <i>Pending outcome of Article 10</i>

	individual case. However, that proportion should never be less than half of those costs.	reasonable in the individual case. However, <i>for the provider of online intermediation services</i> , that proportion should never be less than half of those costs, <i>except for where the mediator determines that the business user who has brought the case has not acted in good faith.</i> [Am. 40]	suggest which proportion is reasonable in the individual case. However, that proportion should never be less than half of those costs. <u>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</u>	
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			<u>conditions that comply with the criteria set out in this Regulation.</u>	
35A		<i>(25a) 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</i>		<i>24/01/2019: Pending outcome of Article 10</i>

			<i>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. [Am. 41]</i>		
3	(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	(26) In order to facilitate the settlement of disputes relating to the provision of online intermediation services using mediation in the Union, the Commission should, together with the Member States , encourage the setting up of specialised mediation organisations, which are currently lacking. The involvement of mediators having specialist knowledge of online intermediation services and online search engines as well as of the specific industry sectors within which those services are provided should add to the	(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	28/01/2019: Compromise text: (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, in close cooperation with the Member States , encourage the setting up of specialised mediation organisations, which	

		likelihood of that process leading to a swift, just and satisfactory outcome.	confidence both parties have in the mediation process and should increase the likelihood of that process leading to a swift, just and satisfactory outcome. [Am. 42]	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.	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.
	3	(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	(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	(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	24/01/2019: <i>Pending outcome of Article 12</i>

	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,	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 <i>relationship</i> in the online platform economy, <i>including those pertaining to SMEs and microenterprises.</i> 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, <i>in particular relating to transparency of funding. Member States should be</i>	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 <u>in accordance with national law, including national procedural requirements.</u> 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	
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	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.	<i>required to set up or nominate such public bodies.</i> <i>For</i> 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. [Am. 43]	associations exercise that right effectively and in an appropriate manner they should meet certain criteria. <u>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 <i>ad hoc</i> 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</u>	
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			<u>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.</u> 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.	
37A		<i>(27a) Breaches of the provisions of this Regulation will in certain instances</i>	<u>(27a) Organisations, associations and public bodies which, in the</u>	24/01/2019: Marked as red (EP AM in this row)

		<i>require a rapid and flexible enforcement. Enforcement bodies set up or nominated by Member States should be responsible for the enforcement of this Regulation in an adequate and effective manner. The enforcement bodies should be established in addition to the procedure for judicial proceedings by representative organisations, associations or public bodies set out in this Regulation. The decisions made by enforcement bodies could be challenged in judicial proceedings according to relevant national legislation.</i> [Am. 44]	<u>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</u>	<i>Council AM in this row is related to Article 12 (technical/yellow item)</i>
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		<u>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 <i>Official Journal of the European Union</i>, 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</u>	
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			<u>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.</u> 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.	
37B		<i>(27b) A close monitoring of the application of this regulation is necessary. Member States should designate national authorities to require the relevant information, which is necessary for the monitoring and enforcement of this Regulation, from providers of online intermediation services and online search engines. The information gathered by those authorities should be provided to the Commission and to the EU Platform Observatory upon request.</i>	<u>(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.</u>	24/01/2019: Marked as red GA

			[Am. 45]		
3	(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.	(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.	(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. <u>Such codes of conduct should therefore be worded in an objective and non-discriminatory way in order to avoid unnecessary entry barriers.</u>	28/01/2019: <i>Compromise text:</i> (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. <u>Such codes of conduct should be worded in an objective and non-</u>	

				<u>discriminatory way.</u>
38A		<i>(28a) For reasons of transparency and accountability, and due to the role and tasks foreseen, the EU Platform Observatory should be granted a role within this Regulation in addition to its establishment as an expert group established by a Commission Decision (EU) 2018/2393. The Observatory should fulfil the tasks granted to it within this Regulation independently and in the public interest and its members should consist of a wide range of independent experts that have proven competence and experience of the online platform economy to ensure this.</i> [Am. 46]		24/01/2019: Pending outcome of Article 13a
3	(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	(29) The Commission should periodically evaluate this Regulation and closely monitor its effects on the online platform economy , in particular with a view to	(29) The Commission should periodically evaluate this Regulation, in particular with a view to determining the need for amendments in light	GA

		commercial developments.	determining the need for amendments in light of relevant technological or commercial developments, <i>and following the evaluation, take appropriate measures. As the sector will be developing rapidly over the coming years, it might be appropriate for this Regulation to be followed up by further and more prescriptive legislation where and if the transparency and fairness provisions established in this Regulation would prove to be insufficient to handle future imbalances and unfair trading practices.</i> [Am. 47]	of relevant technological or commercial developments. <u>In order to obtain a broad view of such developments the evaluation should consider the experiences of Member States and relevant stakeholders.</u>	
	4	(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 Disabilities ⁸ .	(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 Disabilities ⁸ .	(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	

		⁸United 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	⁸United 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	Disabilities⁸. ⁸United 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	
	4	(31) As the objective of this Regulation, namely to ensure a fair, predictable, sustainable and trusted online business environment within the internal market, cannot be sufficiently achieved by the Member States, but can rather, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve	(31) As the objective of this Regulation, namely to ensure a <i>clear</i>, 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	(31) As the objective of this Regulation, namely to <u>regulate specific aspects of transparency and redress in order to</u> 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	

		that objective.	necessary in order to achieve that objective. [Am. 48]	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.	
	4	(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.	(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 <i>such as</i> of judicial cooperation in civil matters, competition, consumer protection, electronic commerce and financial services <i>and is without prejudice to national rules which, in conformity with Union law, regulate unfair commercial practices.</i> [Am. 49]	(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.	<i>Subject to the outcome of the final political agreement</i>

	4	(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.	(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.	(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.	
		COMMISSION'S PROPOSAL	EP AMENDMENTS	COUNCIL AMENDMENTS	COMPROMISE PROPOSALS
	4	HAVE ADOPTED THIS REGULATION:	HAVE ADOPTED THIS REGULATION:	HAVE ADOPTED THIS REGULATION:	HAVE ADOPTED THIS REGULATION:
	4	Article 1 Subject-matter and scope	Article 1 Subject-matter and scope	Article 1 Subject-matter and scope	Article 1 Subject-matter and scope
	4	1. This Regulation lays down rules to ensure that business users of online intermediation	1. This Regulation lays down rules to ensure that business users of online intermediation	1. <u>The purpose of this Regulation is to contribute to the proper</u>	Flexibility towards EP text as to introduce

		services and corporate website users in relation to online search engines are granted appropriate transparency and effective redress possibilities.	services and corporate website users in relation to online search engines are granted appropriate transparency, <i>fairness</i> , and effective redress possibilities. [Am. 50]	<u>functioning of the internal market by</u> the layings 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.	fairness as a scope/objective.
4	2. This Regulation shall apply to online intermediation services and online search engines provided, or offered to be provided, to business users and corporate website users, respectively, that have their place of establishment or residence in the Union and that, through online intermediation services or online search engines, offer goods or services to consumers located in the Union, irrespective of the place of establishment or residence of the providers of those services.	2. This Regulation shall apply to online intermediation services and online search engines provided, or offered to be provided, to business users and corporate website users, respectively, that have their place of establishment or 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 <i>and irrespective of the law</i>	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	31/01/2019: <i>Identical texts:</i> 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	

		<i>otherwise applicable. [Am. 51]</i>	residence of the providers of those services <u>and irrespective of the law otherwise applicable.</u>	goods or services to consumers located in the Union, irrespective of the place of establishment or residence of the providers of those services <u>and irrespective of the law otherwise applicable.</u>
47A		<i>2a. The obligations set out on the providers of online intermediation services in this Regulation shall apply to providers of ancillary operating systems when an operating system in itself acts as an online intermediation service within the meaning of Article 2(2). [Am. 52]</i>		See the options proposed for OS in row 62F
47B		<i>2b. This Regulation shall not apply to online payment services or to online advertising serving tools or online advertising exchanges which are not provided with the aim of the facilitating the initiation of direct transactions and which do not involve a contractual relationship with consumers.</i>		28/01/2019: <i>EP text, pending final confirmation on drafting</i>

		[Am. 53]		
47C		<i>2c. This Regulation shall be without prejudice to Union law, and national rules which, in conformity with Union law, regulate unfair commercial practices. [Am. 54]</i>		GA
47D			<u>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.</u>	<i>Maintaining the GA text</i>

47E			<u>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.</u>	<i>31/01/2019:</i> <u>Compromise proposal 4. This Regulation shall be without prejudice to Union law, in particular 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.</u>
4	Article 2 Definitions	Article 2 Definitions	Article 2 Definitions	Article 2 Definitions
4	For the purposes of this Regulation, the following definitions shall apply:	For the purposes of this Regulation, the following definitions shall apply:	For the purposes of this Regulation, the following definitions shall apply:	For the purposes of this Regulation, the following definitions shall apply:
5	(1) 'business user' means any natural or legal person which	(1) 'business user' means any natural or legal person which	(1) 'business user' means any natural or legal	<i>18/01/2019:</i>

		through online intermediation services offers goods or services to consumers for purposes relating to its trade, business, craft or profession;	through online intermediation services offers goods or services to consumers for purposes relating to its trade, business, craft or profession, <i>including private individuals personally acting as traders via online intermediation services</i> ; [Am. 55]	person which through online intermediation services offers goods or services to consumers for purposes relating to its trade, business, craft or profession;	<i>Council to check and possibly propose text on the basis of EP amendment.</i>
	5	(2) 'online intermediation services' means services which meet all of the following requirements:	(2) 'online intermediation services' means services which meet all of the following requirements:	(2) 'online intermediation services' means services which meet all of the following requirements:	(2) 'online intermediation services' means services which meet all of the following requirements:
	5	(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 Council⁹; ⁹Directive (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).	(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 Council⁹; ⁹Directive (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).	(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 Council⁹; ⁹Directive (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	(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 Council⁹; ⁹Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015

				services (OJ L 241, 17.9.2015, p. 1).	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).
	5	(b) they allow business users to offer goods or services to consumers, with a view to facilitating the initiating of direct transactions between those business users and consumers, irrespective of where those transactions are ultimately concluded;	(b) they allow business users to offer goods or services to consumers, with a view to facilitating the initiating of direct transactions between those business users and consumers, irrespective of where those transactions are ultimately concluded, <i>unless the service of facilitating the initiating of direct transactions between those business users and consumers is of marginal character only</i> ; [Am. 56]	(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;	<i>18/01/2019: EP to redraft for next technical meeting</i>
	5	(c) they are provided to business users on the basis of contractual relationships between, on the one hand, the provider of those services and, on the other hand, both those business users and the	(c) they are provided to business users on the basis of contractual relationships between, on the one hand, the provider of those services and, on the other hand, both those business users and the	(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	<i>11/01/2019: Council to check possibility of keeping EC text GA</i>

		consumers to which those business users offer goods or services;	consumers to which those business users offer goods or services;	business users, <u>which offer goods or services to consumers</u> and the consumers to which those business users offer goods or services;	
	5	(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;	(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;	(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;	(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;
	55A		<i>(3a) 'ancillary operating systems' means software, which meets all of the following requirements:</i>		See the options proposed for OS in row 62F
	55B		<i>(a) the ancillary operating system ensures the essential basic operating of a mobile device or a connected speaker;</i>		See the options proposed for OS in row 62F
	55C		<i>(b)it is closely linked to an online intermediation service which controls the main channel through which applications can be installed on the operating system;</i>		See the options proposed for OS in row 62F

55D		<i>(c) the development and updating of the operating system is provided or controlled by the provider of the linked online intermediation service, either directly or indirectly; [Am. 57]</i>		See the options proposed for OS in row 62F
55E		<i>(3b) 'provider of ancillary operating systems' means any natural or legal person which provides, or which offers to provide, ancillary operating systems; [Am. 58]</i>		See the options proposed for OS in row 62F
5	(4) 'consumer' means any natural person who is acting for purposes which are outside his or her trade, business, craft or profession;	(4) 'consumer' means any natural person who is acting for purposes which are outside his or her trade, business, craft or profession;	(4) 'consumer' means any natural person who is acting for purposes which are outside his or her trade, business, craft or profession;	(4) 'consumer' means any natural person who is acting for purposes which are outside his or her trade, business, craft or profession;
5	(5) 'online search engine' means a digital service that allows users to perform searches of, in principle, all websites or websites in a particular language on the basis of a query on any subject in the form of a keyword, phrase or other input, and returns links in which information related to the requested content can be	(5) 'online search engine' means a digital service that allows users to input queries and perform searches of, in principle, all websites or websites in a particular language on the basis of a query on any subject in the form of a keyword, vocal request , phrase or other input, and returns links output in	(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	28/01/2019: Compromise text: (5) 'online search engine' means a digital service that allows users to input queries on and in order to perform searches of, in principle, all websites or websites in a

	found;	which information related to the requested content can be found; [Am. 59]	<u>any format</u> in which information related to the requested content can be found;	particular language on the basis of a query on any subject in the form of a keyword, <i>voice request</i> , phrase or other input, and returns links <u>results in any format</u> in which information related to the requested content can be found;
5	(6) 'provider of online search engine' means any natural or legal person which provides, or which offers to provide, online search engines to consumers;	(6) 'provider of online search engine' means any natural or legal person which provides, or which offers to provide, online search engines to consumers;	(6) 'provider of online search engine' means any natural or legal person which provides, or which offers to provide, online search engines to consumers;	(6) 'provider of online search engine' means any natural or legal person which provides, or which offers to provide, online search engines to consumers;
5	(7) 'corporate website user' means any natural or legal person which uses websites to offer goods or services to consumers for purposes relating to its trade, business, craft or profession;	(7) 'corporate website user' means any natural or legal person which uses websites <i>an online interface, meaning any software and including websites and mobile applications</i> , to offer goods or services to consumers for purposes relating to its trade, business, craft or profession; [Am. 60]	(7) 'corporate website user' means any natural or legal person which uses websites <u>an online interface, meaning any software, including a website or a part thereof and applications, including mobile applications</u> , to offer goods or services to consumers for purposes	<i>11/01/2019: Council text</i> (7) 'corporate website user' means any natural or legal person which uses websites <u>an online interface, meaning any software, including a website or a part thereof and applications</u> ,

			relating to its trade, business, craft or profession;	<u>including mobile applications</u> , to offer goods or services to consumers for purposes relating to its trade, business, craft or profession;
6	(8) 'ranking' means the relative prominence given to the goods or services offered to consumers by business users through online intermediation services, or to websites indexed for consumers by online search engines, as presented, organised or communicated to those consumers by the providers of online intermediation services or by providers of online search engines, respectively, irrespective of the technological means used for such presentation, organisation or communication;	(8) 'ranking' means the relative prominence given to the goods or services offered to consumers by business users through online intermediation services, or to websites indexed for consumers by online search engines, as presented, organised or communicated to those consumers by the providers of online intermediation services or by providers of online search engines, respectively, irrespective of the technological means used for such presentation, organisation or communication; [Am. 61]	(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 <u>relevance given to consumers search results</u> 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;	<i>11/01/2019:</i> <i>Council text</i> (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 <u>relevance given to consumers search results</u> 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;
6	(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) 139/2004¹⁰; ¹⁰ 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).	(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) 139/2004¹⁰; ¹⁰ 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). (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) 139/2004	(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) 139/2004¹⁰;	11/01/2019: <i>Identical texts, lawyer-linguists to assess placing of the footnote</i> (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) 139/2004¹⁰; ¹⁰ 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).

6	(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.	(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. [Am. 62]	(10) 'terms and conditions' means all terms, <u>and</u> conditions, clauses and other information or <u>specifications</u> , 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.	GA
62A		<i>(10a) 'ancillary goods and services' means goods and services offered to the consumer prior to the completion of a transaction initiated on the online intermediation service in addition to and as complementary to the primary good or service offered by the business user through the online intermediation service.</i> [Am. 63]		28/01/2019: <i>EP text, to be accompanied by a recital</i> <i>(10a) 'ancillary goods and services' means goods and services offered to the consumer prior to the completion of a transaction initiated on the online intermediation service in addition to and as complementary to the</i>

				<i>primary good or service offered by the business user through the online intermediation service.</i> <i>EP proposed recital:</i> Proposed recital for the definition <i>Ancillary goods and products should within this Regulation be understood as products or services offered to the consumer immediately prior to the completion of a transaction initiated on an online intermediation service. Ancillary goods and services should also in their nature be complementary to the primary good or service being sold through the online intermediation service and sold in addition to said good or service</i>
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				<i>meaning that the ancillary good and service would need to be directly related to the primary good or service in question and should supplement or complement this good or service. Products or services that are only being sold in addition to the primary good or service in question without being complementary in their nature should therefore not be considered as ancillary goods and services within the meaning of this Regulation. Furthermore, only products that are being offered immediately prior to the conclusion of the transaction should be covered, meaning that products that are</i>
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				<i>offered at any other time than prior to the conclusion of the contract should not be covered by this Regulation.</i>
62B		<i>(10b) 'mediation' means any structured process as defined in Article 3(a) of Directive (EU) 2008/52 of the European Parliament and the Council^[1]; [Am. 64]</i> ^[1] Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters (OJ L 136, 24.5.2008, p.3).	(Check (10b) against Council text (11))	11/01/2019: <i>Rows 62b and 62d are identical.</i> <u>No text</u> in this row and definition inserted in row 62d.
62C		<i>(10c) "EU Platform Observatory" means the EU Observatory on the Online Platform Economy established in accordance with Commission Decision C(2018)2393. [Am. 65]</i>		<i>Flexibility</i>
62D			<u>(11) 'mediation' means any structured process as defined in Article 3(a) of Directive (EU) 2008/52 of the European</u>	11/01/2019: <i>Rows 62b and 62d are identical.</i> <u>(11) 'mediation' means any structured process as</u>

			<u>Parliament and of the Council on certain aspects of mediation in civil and commercial matters.</u>	<u>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.</u>
62E			<u>(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.</u>	<i>11/01/2019: Council text</i> <u>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.</u>

62F		<i>Article 2 a Anti-circumvention obligations</i>		<i>No compromise</i>
62G		<i>Providers of online intermediation services shall not use any software or services, including ancillary operating systems, which they provide themselves or they control, to circumvent the obligations laid down on the providers of online intermediation services within this Regulation. [Am. 66]</i>		
6			<i>(row moved up to row 62D -(11) Council definition of ‘mediation’ provisionally, to be corrected and renumbered in next version of the 4col.doc.)</i>	
6			<i>(row moved up to row 62E Council definition of ‘durable medium’ provisionally, to be corrected and renumbered in next version of the 4col.doc.)</i>	
6			Article 3	Flexibility

		Article 3 Terms and conditions	Article 3 Terms and conditions	<u>Predictability of Terms and conditions</u>	
	6 4	(1) Providers of online intermediation services shall ensure that their terms and conditions:	1. Providers of online intermediation services shall ensure that their terms and conditions:	(1) Providers of online intermediation services shall ensure that their terms and conditions:	1. Providers of online intermediation services shall ensure that their terms and conditions:
	6		<i>(-a) include only fair and proportionate clauses; [Am. 67]</i>		<i>No compromise</i>
	6	(a) are drafted in clear and unambiguous language;	(a) are drafted in clear and unambiguous intelligible language; [Am. 68]	(a) are drafted in plain and intelligible clear and unambiguous language;	28/01/2019: Council text: (a) are drafted in plain and intelligible clear and unambiguous language;
	6	(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	(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-	re easily available for business users at all stages of their commercial relationship with the provider of online intermediation	re easily available for business users at all stages of their commercial relationship with the provider of online

	stage;	contractual stage;	services, including in the pre-contractual stage;	intermediation services, including in the pre-contractual stage;
6	(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.	(c) set out the objective non-discriminatory grounds for decisions to suspend or terminate or impose any other kind of restriction upon , in whole or in part, the provision of their online intermediation services to business users; [Am. 69]	(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.	28/01/2019: <i>Compromise text, to be complemented by a recital:</i> (c) set out the objective grounds for decisions to suspend or terminate or impose any other kind of restriction upon , in whole or in part, the provision of their online intermediation services to business users;
69A		<i>(ca) include information on any additional distribution channels and potential affiliate programmes through which the provider of online intermediation services might distribute goods and services offered by the business user;</i> [Am. 70]		28/01/2019: <i>EP text:</i> <i>(ca) include information on any additional distribution channels and potential affiliate programmes through which the provider of online intermediation services might</i>

				<i>distribute goods and services offered by the business user;</i>
69B		<i>(cb) include general information regarding the effects of the terms and conditions on the ownership and control of intellectual property rights. [Am. 71]</i>		28/01/2019: <i>EP text:</i> <i>(cb) include general information regarding the effects of the terms and conditions on the ownership and control of intellectual property rights.</i>
7	2. Terms and conditions, or specific provisions thereof, which do not comply with the requirements of paragraph 1 shall not be binding on the business user concerned where such non-compliance is established by a competent court.	2. Terms and conditions, or specific provisions thereof, which do not comply with the requirements of paragraph 1 shall not be binding on the business user concerned be null and void where such non-compliance is established by a competent court. [Am. 72]	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.	28/01/2019: <i>No text in row 70</i>
7	3. Providers of online intermediation services shall notify to the business users concerned any envisaged modification of their terms and conditions.	3. Providers of online intermediation services shall notify on a durable medium to the business users concerned any envisaged modification of their terms and conditions. [Am. 73]	3. Providers of online intermediation services shall notify on a durable medium to the business users concerned any envisaged proposed modification of their	28/01/2019: <i>Council text:</i> 3. Providers of online intermediation services shall notify on a durable medium to the business users

			terms and conditions.	concerned any envisaged proposed modification of their terms and conditions.
7	The envisaged modifications shall not be implemented before the expiry of a notice period which is reasonable and proportionate to the nature and extent of the envisaged modifications and to their consequences for the business user concerned. That notice period shall be at least 15 days from the date on which the provider of online intermediation services notifies the business users concerned about the envisaged modifications.	The 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. <i>Where the modifications require the business user to make significant technical adjustments to its goods or services, this period shall be at least 30 days. The business user shall be allowed to terminate their agreement within 15 days from the receipt of the notice, where such modifications are</i>	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.	24/01/2019: <i>Provisional compromise proposal (Council proposal with an EP LS drafting suggestion):</i> 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

			<i>detrimental to the business user. [Am. 74]</i>		business users concerned about the envisaged <u>proposed</u> modifications. <u>Providers of online intermediation services shall grant longer periods when this is necessary to allow business users to make technical or commercial adaptations to comply with the modifications.</u> <u>The business user shall be allowed to terminate their agreement within 15 days from the receipt of the notice, unless a shorter period applies to the contract.</u> EP LS to send text on this
	7	The business user concerned may, either by means of a written statement or a clear	The business user concerned may, either by means of a written statement or a clear	The business user concerned may, either by means of a written	<i>18/12/2018:</i> <i>Council text</i>

	affirmative action, waive the notice period referred to in the second subparagraph.	affirmative action, waive the notice period referred to in the second subparagraph.	statement or a clear affirmative action, waive the notice period referred to in the second subparagraph <u>at any moment after the notification.</u>	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 <u>at any moment after the notification.</u>
73A		<i>During the 15 days' notice period, submitting new or updating goods or services on the online intermediation service shall be considered clear affirmative action to waive the notice period.</i>		28/01/2019: <i>Compromise text:</i> <u>During the notice period, submitting new goods or services on the online intermediation service shall be considered clear affirmative action to waive the notice period, except for in cases where the reasonable and proportionate notice period is longer than 15 days because the modifications to the terms and conditions require the business user to make</u>

				<u>significant technical adjustments to its goods or services. In such cases, the notice period shall not be considered automatically waived where the business user submits new goods and services.</u> <i><u>Fine-tuned text to be further proposed:</u></i> <i>During the notice period, submitting new goods or services, or new or updated software applications, to the online intermediation service shall be considered clear affirmative action to waive the notice period, except for in cases where the reasonable and proportionate notice period is longer than 15 days because the modifications to the terms and conditions require the business user to make</i>
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				<i>significant technical adjustments to its goods or services. In such cases, the notice period shall not be considered automatically waived where the business user submits new goods, services or software applications, or updated software applications.</i>
73B		<i>In cases where the notice period is 30 days because the modifications to the terms and conditions require the business user to make significant technical adjustments to its goods or services, the notice period shall not be considered automatically waived where the business user submits new or updates goods and services. [Am. 75]</i>		28/01/2019: Covered by row 73a, this row left empty
7	4. Modifications to terms and conditions implemented by a provider of online intermediation services contrary to the provisions of paragraph 3 shall be null and	4. Modifications to terms and conditions implemented by a provider of online intermediation services contrary to the provisions of paragraph 3 shall be null and	3. Modifications to terms and conditions implemented by a provider of online intermediation services contrary to the provisions	28/01/2019: Compromise text: 3. Modifications to terms and conditions implemented by a

	void.	void.	of paragraph 3 shall be null and void. <u>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.</u>	provider of online intermediation services contrary to the provisions of paragraph 3 shall be null and void. <u>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 null and void.</u>
7	5. Paragraph 3 shall not apply where a provider of online intermediation services is subject to a legal obligation which requires it to modify its terms and conditions in a manner which does not allow it to respect the notice period referred to in the second subparagraph of paragraph 3.	5. The notice periods set out in paragraph 3 shall not apply where a provider of online intermediation services is:	4. Paragraph 3 shall not apply where 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	28/01/2019: Compromise text: 5. The notice period set out in paragraph 3 shall not apply where a provider of online intermediation services is:

			referred to in the second subparagraph of paragraph 3 <u>2, this notice period shall not apply.</u>	
7		(a) subject to a legal obligation which requires it to modify its terms and conditions in a manner which does not allow it to respect the notice period period periods referred to in the second subparagraph of paragraph 3;		28/01/2019: <i>Compromise text pending a LS check:</i> (a) 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; EP LS has a comment on this
76A		(b) <i>addressing unforeseen and imminent danger which could harm or pose security problems for online intermediation services, their consumers or other users, including in connection with fraud, malware, spam, data breaches or other</i>		28/01/2019: <i>Compromise text:</i> (b) <i>has to exceptionally modify their terms and conditions to address an unforeseen and imminent danger</i>

			<i>cybersecurity risks. [Am. 76]</i>		<i>related to defending the online intermediation services, their consumers or other business users from fraud, malware, spam, data breaches or other cybersecurity risks.</i>
	76B		<i>5a. The providers of online intermediation services shall ensure that the brand attributed to business users and their goods and services is recognizable throughout the entire intermediation process. [Am. 77]</i>		<i>28/01/2019: Compromise text: 5a. The providers of online intermediation services shall ensure that the identity of the business user providing the goods or services on the online intermediation service is clearly visible.</i>
	77.	Article 4 Suspension and termination	Article 4 Suspension, restrictions and termination [Am. 78]	Article 4 Suspension and termination	<i>Compromise text according to the outcome of the technical discussions</i>
	78.	1. Where a provider of online intermediation services decides to suspend or terminate, in whole or in part, the provision	1. Where a provider of online intermediation services decides to suspend, restrict or terminate, in whole or in part,	1. Where a provider of online intermediation services decides to suspend or terminate, in	<i>28/01/2019: Provisional compromise to take Council text with</i>

	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.	the provision of its online intermediation services to a given business user, it shall provide inform the business user concerned at least 15 days before implementing that decision, and provide the business user , without undue delay, with a statement of reasons for that decision. [Am. 79]	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. <u>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.</u>	<i>reference to restriction to be included - pending final drafting of the whole Article</i>
78A		<i>1a. Paragraph 1 shall not apply where:</i>		<i>28/01/2019: Provisional compromise would include no text in this</i>

				<i>row, pending final drafting of the whole Article</i>
	78B		<i>(a) a provider of online intermediation services is subject to a legal obligation to suspend, restrict or terminate, in whole or in part, the provision of its online intermediation services to a given business user;</i>	<i>28/01/2019: Provisional compromise would include no text in this row, pending final drafting of the whole Article</i>
	78C		<i>(b) a provider of online intermediation services acts to protect consumers on the basis of a reasonable doubt regarding illicit content, the safety of a product or service, counterfeiting, fraud, or suitability of the product or service to minors;</i>	<i>28/01/2019: Provisional compromise would include no text in this row, pending final drafting of the whole Article</i>
	78D		<i>(c) a provider of online intermediation services can demonstrate that the business user concerned has repeatedly infringed the applicable terms and conditions, resulting in their suspension, restriction or termination.</i>	<i>28/01/2019: Provisional compromise would include no text in this row, pending final drafting of the whole Article</i>
	78E		<i>In such cases, the business user shall immediately be</i>	<i>28/01/2019: Provisional</i>

			<i>provided with a statement of reasons. [Am. 80]</i>		<i>compromise would include no text in this row, pending final drafting of the whole Article</i>
79.	2. The statement of reasons referred to in paragraph 1 shall contain a reference to the specific facts or circumstances that led to the decision of the provider of online intermediation services, as well as a reference to the applicable objective ground or grounds for that decision referred to in Article 3(1)(c).	2. The statement of reasons referred to in paragraph 1 <i>or Ia</i> shall contain a reference to the specific facts or circumstances that led to the decision of the provider of online intermediation services, as well as a reference to the applicable objective <i>non-discriminatory</i> ground or grounds for that decision referred to in Article 3(1)(c). <i>Where the suspension, restriction or termination results from a third party notification, the contents of said notification shall be included in the statement of reasons. [Am. 81]</i>	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). <u>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</u>	28/01/2019: <i>Provisional compromise to take Council text with reference to restriction to be included - pending final drafting of the whole Article</i> <i>EP text on third party notifications to be included in row 79g</i>	

			<u>medium.</u>	
79A		<i>2a. Paragraph 2 shall not apply where a provider of online intermediation services is subject to a legal obligation not to provide the specific facts or circumstances or the reference to the applicable ground or grounds, or where a provider of online intermediation services can demonstrate that the business user concerned has repeatedly infringed the applicable terms and conditions, resulting in their suspension, restriction or termination. [Am. 82]</i>		<i>28/01/2019: Provisional compromise would include no text in this row, pending final drafting of the whole Article</i>
79B		<i>2b. Termination, restriction and suspension shall be, where possible and proportionate, preceded by a notification and opportunity to clarify or re-establish compliance. Where a suspension, restriction or termination are based on a correctable infringement of terms and conditions and not committed in bad faith,</i>		<i>28/01/2019: EP to propose redrafting of this paragraph, pending final drafting of the whole Article</i> <i>Possible solution: 3. In the case of restriction, suspension or termination, the</i>

		<i>provider of online intermediation services shall seek to reinstate the business user as soon as the non-compliance is corrected. Where a suspension or termination is found to be in error, the business user shall be reinstalled without delay and under the same conditions as before the suspension, restriction or termination. [Am. 83]</i>		<i>provider of online intermediation services shall provide the business user the opportunity to clarify the facts and circumstances in the framework of the complaints handling process referred to in Article 9. Where the restriction, suspension or termination is revoked by the intermediary service provider, it shall reinstate the business user without undue delay, including any access to personal or other data, or both, that resulted from its use of the relevant online intermediation services prior to the restriction, suspension or termination having taken effect.</i>
79C			3. The notice period in	28/01/2019:

			<u>paragraph 2 shall not apply where a provider of online intermediation services:</u>	<i>Provisional compromise to take Council text - pending final drafting of the whole Article</i>
79D			<u>(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</u>	28/01/2019: <i>Provisional compromise to take Council text - pending final drafting of the whole Article</i>
79E			<u>(b) exercises a right of termination under an imperative reason pursuant to national law which is in compliance with Union law.</u>	28/01/2019: <i>Provisional compromise to take Council text with redrafting and EP text from row 78d to be included as a point under Paragraph 3 - pending final drafting of the whole Article</i>
79F			<u>The provider of online intermediation services</u>	28/01/2019:

				<u>shall provide the business user concerned, without undue delay, with a statement of reasons for that decision on a durable medium.</u>	<i>Provisional compromise to take Council text, pending final drafting of the whole Article</i>
79G				<u>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).</u>	28/01/2019: <i>Provisional compromise to take Council text with reference to third party notifications as in EP row 79, pending final drafting of the whole Article</i>
80.	Article 5 Ranking	Article 5 Ranking	Article 5 Ranking	Article 5 Ranking	Identical text (EC, EP, Council), pending agreement on the whole article to be indicated as GREEN
81.	1. Providers of online intermediation services shall set out in their terms and conditions the main parameters	<i>1. Without prejudice to paragraph 4</i> , providers of online intermediation services shall set out in their terms and	1. Providers of online intermediation services shall set out in their terms and conditions the main		GA

	determining ranking and the reasons for the relative importance of those main parameters as opposed to other parameters.	conditions the main parameters determining ranking and the reasons for the relative importance of those main parameters as opposed to other parameters. <i>Where disclosure of all parameters in the terms and conditions is not technologically possible or would have the effect of disclosing weighting of all individual parameters, only the main parameters and the reasons for their relative importance shall be presented. [Am. 84]</i>	parameters determining ranking and the reasons for the relative importance of those main parameters as opposed to other parameters.	
81A		<i>Providers of online intermediation services shall ensure that ranking reflects the non-arbitrary application of the disclosed ranking parameters and their relative importance. [Am. 85]</i>		28/01/2019: <i>To be moved to a recital</i>
82.	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	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	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	28/01/2019: <i>To be moved to row 83d, no text in this row</i>

	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.	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. [Am. 86]	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.	
82A		<i>When displaying the results, the provider of online intermediation service shall disclose close to each ranking whether and to what extent it has been influenced by differentiated treatment, or by any direct or indirect remuneration, contractual or direct ownership relations.</i> [Am. 87]		GA <i>(to be pointed out the overlapping with the relevant provisions in the New Deal for Consumers (Proposal from EP to show flexibility on this paragraph in exchange for the disclosure requirement for search engines).</i>
83.	2. Providers of online search engines shall set out for corporate website users the main parameters determining ranking, by providing an easily and publicly available description, drafted in clear and unambiguous language on the online search engines of those providers. They shall keep that	2. Without prejudice to paragraph 4, providers of online search engines shall set out for corporate website users the main parameters determining ranking and the reasons for the relative importance of those parameters, by providing an easily and publicly available	2. Providers of online search engines shall set out for corporate website users the main parameters determining ranking <u>and the relative importance of those main parameters as opposed to other parameters,</u> by providing an easily and	GA <i>At technical level EP showed flexibility towards the GA text (without “reasons”), but only for the para related to search engines.</i>

	description up to date.	description, drafted in clear and unambiguous intelligible language on the online search engines of those providers. They shall keep that description up to date. <i>Where disclosure of all parameters in the terms and conditions is not technologically possible or would have the effect of disclosing weighting of all individual parameters, only the main parameters and the reasons for their relative importance shall be presented.</i>	publicly available description, drafted in <u>plain and intelligible</u> clear and unambiguous language on the online search engines of those providers. They shall keep that description up to date.	<i>The EP proposed compromise reads as follows:</i> Providers of online search engines shall set out for corporate website users the main parameters, <u>which individually or collectively are most significant in</u> determining ranking and the reasons for the relative <u>importance of those main parameters</u> , by providing an easily and publicly available description, drafted in clear and unambiguous <u>plain and intelligible</u> language on the online search engines of those providers. They shall keep that description up to date
83A		<i>Providers of online search engines shall ensure that ranking reflects the non-arbitrary application of the</i>		28/01/2019: <i>To be moved to a recital</i>

		<i>disclosed ranking parameters and their relative importance.</i>		
83B		<i>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.</i>		<i>28/01/2019: To be moved to row 83d, no text in this row</i>
83C		<i>When displaying the results, the provider of online search engine shall disclose close to each ranking whether and to what extent it has been influenced by differentiated treatment, including differentiated positioning and display, or against direct or indirect remuneration, contractual or direct ownership relations. [Am. 88]</i>		<i>(to be pointed out the overlapping with the relevant provisions in the New Deal for Consumers EP compromise solution When displaying the results, the providers of online search engines shall <u>indicate</u> disclose close to each ranking <u>result</u> <u>concerned</u> whether</i>

				<u>and to what extent it its positioning and display has been influenced by differentiated treatment, including differentiated positioning and display, or against direct or indirect remuneration, including contractual or direct ownership relations to the benefit of the provider.</u>
83D		<i>2a. Where a provider of an online search engine has altered the ranking order in a specific case or delisted a particular website following a third party notification, the provider shall offer the possibility for the corporate website user to inspect the contents of the notice [in a publicly accessible online database]. [Am. 89]</i>	<u>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</u>	28/01/2019: Text from rows 82 and 83b to moved here in line with Council text in paragraph 2a. EP text on paragraph 2a is on a different subject. Flexibility EP offered the compromise to delete the text in brackets

			<u>with the requirements set out in paragraphs 1 and 2.</u>	
84.	3. The descriptions referred to in paragraphs 1 and 2 shall be sufficient to enable the business users or corporate website users to obtain an adequate understanding of whether, and if so how and to what extent, the ranking mechanism takes account of the following:	3. The descriptions referred to in paragraphs 1 and 2 shall be sufficient to enable the business users or corporate website users to obtain an adequate understanding of whether, and if so how and to what extent, the ranking mechanism takes account of the following:	3. The descriptions referred to in paragraphs 1, and 2 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:	28/01/2019: Council text 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
85.	(a) the characteristics of the goods and services offered to consumers through the online intermediation services or the online search engine;	(a) the characteristics of the goods and services offered to consumers through the online intermediation services or the online search engine;	(a) the characteristics of the goods and services offered to consumers through the online intermediation services or the online search engine;	(a) the characteristics of the goods and services offered to consumers through the online intermediation services or the online search engine;
86.	(b) the relevance of those characteristics for those	(b) the relevance of those characteristics for those	(b) the relevance of those characteristics for those	(b) the relevance of those characteristics

	consumers;	consumers;	consumers;	for those consumers;
87.	(c) as regards online search engines, the design characteristics of the website used by corporate website users.	(c) as regards online search engines, the design characteristics of the website used by corporate website users.	(c) as regards online search engines, the design characteristics of the website used by corporate website users.	(c) as regards online search engines, the design characteristics of the website used by corporate website users.
88.	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.	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 <i>information that with reasonable certainty would result in the enabling of deception of consumers through the manipulation of search results. This Article shall be without prejudice to</i> Directive (EU) 2016/943. [Am. 90]	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.	<i>Providers of online intermediation services and providers of online search engines shall, when complying with the requirements of this Article, not be required to publicly disclose the algorithms nor any information that with reasonable certainty would result in the enabling of deception of consumers or consumer harm through the manipulation of search results. This Article shall be without prejudice to</i>

				Directive (EU) 2016/943.
88A		<i>4a. To facilitate the compliance of providers of online intermediation services and providers of online search engines with and the enforcement of the requirements of this Article, the Commission shall accompany the transparency requirements set out in this Article by guidelines. [Am. 91]</i>		Council could show flexibility
88B		<i>Article 5a Ancillary goods and services</i>		28/01/2019: <i>Article 5a Ancillary goods and services</i>
88C		<i>1. Where ancillary goods and services, including financial products, are offered to consumers through the online intermediation service, either by the provider of the online intermediation service or by third parties, the providers of the online intermediation service shall set out in their terms and conditions a description of</i>		28/01/2019: <i>EP text (to be accompanied by a recital):</i> <i>1. Where ancillary goods and services, including financial products, are offered to consumers through the online intermediation</i>

		<i>the type of ancillary goods and services offered and a description of whether and under which conditions the business user is also allowed to offer their own ancillary goods and services through the online intermediation service.</i>		<i>service, either by the provider of the online intermediation service or by third parties, the providers of the online intermediation service shall set out in their terms and conditions a description of the type of ancillary goods and services offered and a description of whether and under which conditions the business user is also allowed to offer their own ancillary goods and services through the online intermediation service.</i> <i>EP proposed recital: Providers of online intermediation services offering goods or services to consumers that are ancillary to a good or service sold by a business user using</i>
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				<i>their online intermediation service, should set out in their terms and conditions a description of the type of ancillary goods and services being offered. Ancillary goods and services should be understood as products that typically depend on the specific good or service being offered by the business user in order to function. Examples of ancillary services could include repair services for a specific good or types of financial products such as car rental insurance or similar insurance type products offered to the specific goods or services being offered by the business user. Likewise, ancillary goods may include goods that</i>
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				<i>complement the specific product being offered by the business user by being an upgrade or a customisation tool linked to that specific good or service. The description should be available in the terms and conditions regardless of whether the ancillary good or service is being provided by the online intermediation service itself or by a third party. Such a description should be comprehensive enough as to allow a business user to understand whether any good or service is being sold as ancillary to the business user's own good or service. As such, the description should not necessarily include the specific good or service but</i>
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				<i>rather the type of product being offered as complementary to the primary product of the business user. Furthermore, this description should in all circumstances include whether a business user is allowed to offer its own ancillary good or service in addition to the primary good or service it is offering through the online intermediation service, and in cases where this is allowed, the description should also set out under which conditions.</i> N.b. If necessary, even more concrete examples could be added as regards ancillary goods than simply referring to upgrade or customisation tools.
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				Such examples could include cartridges for a printer, lenses/objectives for a camera, specific care products for consumer goods, and so on.
88D		<i>2. The provider of the online intermediation service shall at the request of a business user provide a list of ancillary goods or services offered as complementary and in addition to the goods or services being offered by the business user. At the time of offering the ancillary goods and services, the providers of online intermediation services shall disclose clearly and visibly who provides the ancillary goods and services.</i> [Am. 92]		28/01/2019: <i>No text</i>
89.	Article 6 Differentiated treatment	Article 6 Differentiated treatment	Article 6 Differentiated treatment	
90.	1. Providers of online intermediation services shall	1. Providers of online intermediation services shall	1. Providers of online intermediation services	18/01/2019: <i>EP proposal to</i>

	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.	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.	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.	<i>replace EP AM in row 94</i> 1. Providers of online intermediation services shall include in their terms and conditions a description of any differentiated treatment, <i>whether through legal, commercial or technical means,</i> 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.
90A.		<i>1a. Providers of online search engines shall set out a description of any differentiated treatment</i>		<i>No compromise</i>

		<i>which they give, or may give, in relation to, on the one hand, goods or services offered to consumers through those online search engines by either that provider itself or any corporate website users which that provider controls and, on the other hand, other corporate website users.</i> [Am. 93]		
91.	2. The description referred to in paragraph 1 shall cover at least, where applicable, any differentiated treatment through specific measures taken by, or the behaviour of, the provider of the online intermediation services relating to any of the following:	2. The description referred to in paragraph 1 and 1a shall cover at least, where applicable, any differentiated treatment through specific measures taken by, or the behaviour of, the provider of the online intermediation services or the provider of online search engines relating to any of the following: [Am. 94]	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:	11/01/2019: <i>Provisional agreement to keep Council text.</i> <i>Question of addition of search engines remains red.</i> 2. The description referred to in paragraph 1 and 1a 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 for the provider of online search engines relating to any of the following:
92.	(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;	(a) access that the provider, or that the business users which that provider controls, may have to any personal data or other data, or both, which business users, corporate website users or consumers provide for the use of the online intermediation services or the online search engines concerned or which are generated through the provision of those services; [Am. 95]	(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;	
93.	(b) ranking;	(b) ranking and pre-configured settings related to goods or services offered to consumers through those online intermediation services by either that provider itself or by any business users which that provider controls, on the one hand, and, other business users, on the other	(b) ranking;	18/01/2019: EP redrafting proposal: (b) ranking or other settings applied by the provider that influence consumer access to goods or services offered

		<i>hand</i> ; [Am. 96]		<i>through those online intermediation services by other business users; [n.b. inclusion of search engines would depend on the political decision]; Flexibility</i>
94.	(c) any direct or indirect remuneration charged for the use of the online intermediation services concerned;	(c) any direct or indirect remuneration charged for the use of the online intermediation services or online search engines concerned <i>or any ancillary services, and any technical or economic benefit that it does not extend to all business users or corporate website users</i> ; [Am. 97]	(c) any direct or indirect remuneration charged for the use of the online intermediation services concerned;	<i>18/01/2019: See EP redrafting proposal inserted in 90. Question of addition of search engines remains red.</i>
95.	(d) access to, or conditions for use of, services that are directly connected or ancillary to the online intermediation services concerned.	(d) access to, or conditions for use of, services <i>or functionalities</i> that are directly connected or ancillary to the online intermediation services or online search engines concerned. [Am. 98]	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.	GA
95A		<i>2a. Providers of online intermediation services shall treat goods or services offered to consumers</i>		GA

		<i>through those online intermediation services by that provider itself or any business users which that provider controls, on the one hand, and, competing goods or services offered through the online intermediation service by other business users on the other hand, equally, without discrimination, unless such differentiated treatment is applied in an non-discriminatory manner between all other business users and can be objectively justified in accordance with the general principles of Union law. Any differentiated treatment shall not prevent consumers' possibility to access and use goods and services of their preference among those that are offered through the online intermediation service.</i> [Am. 99]		
95B		<i>Article 6a</i> <i>Unfair trading practices</i>		<i>Flexibility by including possible solutions to capture</i>

				<i>the EP main concerns at the level of certain articles, without exceeding the spirit of the GA</i> <i>See Annex 1</i>
95C		<i>Providers of online intermediation services shall not engage in unfair commercial practices as listed in Annex I. This list is without prejudice to other Union law or national law that Member States apply in conformity with Union law and to obligations of providers of online intermediation services stemming from such law.</i> [Am. 100]		
96.	Article 7 Access to data	Article 7 Access to data	Article 7 Access to data	
97.	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	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	1. Providers of online intermediation services shall include in their terms and conditions a description of the technical and contractual access, or absence	Identical text (EC, EP, Council), pending agreement on the whole article to be indicated as GREEN

	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.	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.	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.	
97A		<i>1a. Providers of online search engines shall set out a description, available on the online search engines of those providers, of the technical access, or absence thereof, of business users to any personal data or other data, or both, which corporate website users or consumers provide for the use of the online search engines concerned or which are generated through the provision of those services. [Am. 101]</i>		GA
98.	2. Through the description referred to in paragraph 1, providers of online	2. Through The description referred to in paragraph 1 <i>or 1a set out by</i> , providers of	2. Through the description referred to in paragraph 1, providers of	GA

	intermediation services shall adequately inform business users at least of the following:	online intermediation services <i>or providers of online search engines</i> shall <i>be adequate enough to</i> inform business users <i>or corporate website users</i> at least of the following: [Am. 102]	online intermediation services shall adequately inform business users at least <u>in particular</u> of the following:	
99.	(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;	(a) whether the provider of online intermediation services <i>or provider of online search engine</i> has access to personal data or other data, or both, which business users <i>or corporate website users</i> 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; [Am. 103]	(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 <u>and if that data is provided to third parties;</u>	GA
100.9	(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	(b) whether a business user <i>or a corporate website user</i> has access to personal data or other data, or both, provided by that business user <i>or a corporate website user</i> in connection to his or her use of the online intermediation	(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	GA

	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;	services <i>or online search engines</i> concerned or generated through the provision of those services to that business user <i>or a corporate website user</i> and the consumers of his or her goods or services, and if so, to which categories of such data and under what conditions; [Am. 104]	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;	
101.9	(c) whether, in addition to point (b), a business user has access to personal data or other data, or both, including in aggregated form, provided by or generated through the provision of the online intermediation services to all of the business users and consumers thereof, and if so, to which categories of such data and under what conditions.	(c) whether, in addition to point (b), a business user <i>or corporate website user</i> 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 <i>or online search engines</i> to all of the business users <i>or corporate website users</i> and consumers thereof, and if so, to which categories of such data and under what conditions. [Am. 105]	(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.	GA
101A		<i>2a. Business users shall have the right to receive anonymised ratings and reviews or any other</i>		28/01/2019: To be redrafted and included in recital 20, EP to propose

		<i>anonymised and aggregated data related to their ratings and reviews on the online intermediation service, regardless of whether they have provided such data to the provider of online intermediation services themselves, in a structured, commonly used and machine-readable format. [Am. 106]</i>		
101B		<i>2b. The provider of the online intermediation service shall not for commercial purposes disclose to third parties, including within their corporate structure, data generated by the transactions of a business user without the explicit consent of the business user. This paragraph shall not apply where a provider of online intermediation services is subject to a legal obligation to disclose data generated by the transactions of a business user. [Am. 107]</i>		<i>No compromise</i>
101C		<i>2c. This Regulation shall be</i>		

		<i>without prejudice to the application of Regulation (EU) 2016/679. [Am. 108]</i>		
102.9	Article 8 Restrictions to offer different conditions through other means	Article 8 Restrictions to offer different conditions through other means	Article 8 Restrictions to offer different conditions through other means	GA
103.1	1. Where, in the provision of their services, providers of online intermediation services restrict the ability of business users to offer the same goods and services to consumers under different conditions through other means than through those services, they shall include grounds for that restriction in their terms and conditions and make those grounds easily available to the public. Those grounds shall include the main economic, commercial or legal considerations for those restrictions.	1. Where, in the provision of their services, Providers of online intermediation services shall not restrict the ability of business users to offer the same goods and services to consumers under different <i>or the same</i> conditions through other <i>online intermediation</i> 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. [Am. 109]	1. Where, in the provision of their services, providers of online intermediation services <u>in accordance with national law</u> 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	GA

			those restrictions.	
103A		<i>1a. For any other restrictions to offer different conditions through other means than those prohibited in paragraph 1, providers of online intermediation services which restrict the ability of business users to offer the same goods and services to consumers under different conditions through other means than through those services shall include grounds for that restriction in their terms and conditions and make those grounds easily available to the public. Those grounds shall include the main economic, commercial or legal considerations for those restrictions. These restrictions shall be proportionate and shall be justified by a legitimate interest of the provider. [Am. 110]</i>		GA
104.	2. The obligation set out in paragraph 1 shall not affect any prohibitions or limitations in	2. The obligation set out Member States may prohibit or limit the restrictions	2. The obligation set out in paragraph 1 shall not affect any prohibitions or	GA

	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.	<i>referred to in paragraph 1a or other restrictions except for those referred to</i> 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 <i>in their</i> national rules that are adopted in accordance with <i>the</i> Union law and to which the providers of the online intermediation services are subject. [Am. 111]	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.	
105.1	Article 9 Internal complaint-handling system	Article 9 Internal complaint-handling system	Article 9 Internal complaint-handling system	Article 9 Internal complaint-handling system
106.3	1. Providers of online intermediation services shall provide for an internal system for handling the complaints of business users.	1. Providers of online intermediation services shall provide for an internal system for handling the complaints of business users.	1. Providers of online intermediation services shall provide for an internal system for handling the complaints of business users.	1. Providers of online intermediation services shall provide for an internal system for handling the complaints of business users.
107.1	That internal complaint-handling system shall be easily accessible for business users. It shall allow them to lodge	That internal complaint-handling system shall be easily accessible <i>and free of charge</i> for business users <i>and</i>	That internal complaint-handling system shall be easily accessible for business users. It shall	28/01/2019: Compromise text: That internal

	complaints directly with the provider concerned regarding any of the following issues:	<i>ensure handling within a reasonable time frame. It shall be based on the principles of transparency and equal treatment.</i> It shall allow them to lodge complaints directly with the provider concerned regarding any of the following issues: [Am. 112]	allow them to lodge complaints directly with the provider concerned regarding any of the following issues:	complaint-handling system shall be easily accessible <u>and free of charge</u> for business users <u>and ensure handling within a reasonable time frame. It shall be based on the principles of transparency and equal treatment applied to equal situations, and treating complaints in a manner which is proportionate to their importance and complexity.</u> It shall allow them to lodge complaints directly with the provider concerned regarding any of the following issues:
108.1	(a) alleged non-compliance by that provider with any legal obligations laid down in this Regulation which negatively affects the complainant;	(a) alleged non-compliance by that provider with any legal obligations laid down in this Regulation which negatively affects the complainant; [Am. 113]	(a) alleged non-compliance by that provider with any legal obligations laid down in this Regulation which negatively affects the complainant;	<i>24/01/2019: EP and Council texts are identical</i> <i>Lawyer-linguists to check whether reference to ‘legal’ is</i>

				<i>necessary</i> (a) alleged non-compliance by that provider with any legal obligations laid down in this Regulation which negatively affects the complainant;
109.1	(b) technological issues which relate directly to the provision of online intermediation services, and which negatively affect the complainant in a non-negligible manner;	(b) technological issues which relate directly to the provision of online intermediation services, and which negatively affect the complainant in a non-negligible manner; [Am. 114]	(b) technological issues which relate directly to the provision of online intermediation services, and which negatively affect the complainant in a non-negligible manner;	28/01/2019: Council text: (b) technological issues which relate directly to the provision of online intermediation services, and which negatively affect the complainant in a non-negligible manner;
110.1	(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.	(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. [Am. 115]	(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	28/01/2019: Council text: (c) measures taken by, or behaviour of, that provider which relate directly to the provision of the online

			a non-negligible manner.	intermediation services, and which negatively affect the complainant in a non-negligible manner.
111.1	2. As part of their internal complaint-handling system, providers of online intermediation services shall:	2. As part of their internal complaint-handling system, providers of online intermediation services shall:	2. As part of their internal complaint-handling system, providers of online intermediation services shall:	2. As part of their internal complaint-handling system, providers of online intermediation services shall:
112.1	(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;	(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;	(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;	24/01/2019: <i>Last part of the text replaced by row 107 and thus removed</i> (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;
113.1	(b) process complaints swiftly and effectively, taking into	(b) process complaints swiftly and effectively, taking into	(b) process complaints swiftly and effectively,	28/01/2019: <i>EC text</i>

	account the importance and complexity of the issue raised;	account the importance and complexity of the issue raised, <i>providing in any case a first response within 15 days;</i> [Am. 116]	taking into account the importance and complexity of the issue raised;	(b) process complaints swiftly and effectively, taking into account the importance and complexity of the issue raised;
114.1	(c) communicate to the complainant the outcome of the internal complaint-handling process, in an individualised manner and drafted in clear and unambiguous language.	(c) communicate to the complainant the outcome of the internal complaint-handling process, in an individualised manner and drafted in clear and unambiguous <i>intelligible</i> language. [Am. 117]	(c) communicate to the complainant the outcome of the internal complaint-handling process, in an individualised manner and drafted in <u>plain and intelligible</u> clear and unambiguous language.	<i>28/01/2019:</i> <i>Following outcome of row 67:</i> (c) communicate to the complainant the outcome of the internal complaint-handling process, in an individualised manner and drafted in <u>plain and intelligible</u> clear and unambiguous language.
115.1	3. Providers of online intermediation services shall include in their terms and conditions all relevant information relating to the access to and functioning of their internal complaint-handling system.	3. Providers of online intermediation services shall include in their terms and conditions all relevant information relating to the access to and functioning of their internal complaint-handling system.	3. Providers of online intermediation services shall include <u>provide</u> in their terms and conditions all relevant information relating to the access to and functioning of their internal complaint-handling system.	<i>11/01/2019:</i> <i>Council text</i> 3. Providers of online intermediation services shall include <u>provide</u> in their terms and conditions all relevant information relating to the access

				to and functioning of their internal complaint-handling system.
116.	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.	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. <i>They shall keep that information up to date. [Am. 118]</i>	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.	<i>28/01/2019: Compromise text:</i> 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. <i>They shall verify the information at least annually and where significant changes are needed, shall update that information.</i>
117.1	That information shall include the total number of complaints lodged, the subject-matter of the complaints, the time period needed to process the complaints and the decision taken on the complaints.	That information shall include the total number of complaints lodged, the subject-matter <i>main types</i> of the complaints, the <i>average</i> time period needed to process the complaints and the	That information shall include the total number of complaints lodged, the subject-matter <i>main types</i> of the complaints, <i>and the average</i> time period needed to process	<i>28/01/2019: Compromise text:</i> That information shall include the total number of complaints lodged, the subject-

		decision taken on the aggregated information regarding the outcome of complaints. [Am. 119]	the complaints and the decision taken on the complaints.	matter <u>main types</u> of the complaints, the <u>average</u> time period needed to process the complaints and the decision taken on the aggregated information regarding the outcome of complaints.
118.1	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/EC¹¹. ¹¹ 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).	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/EC¹¹. ¹¹ 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).	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/EC¹¹. ¹¹ 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).	<i>11/01/2019: Identical texts, lawyer-linguists to assess placing of the footnote</i> 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/EC¹¹. ¹¹ 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).
119.1	Article 10 Mediation	Article 10 Mediation	Article 10 Mediation	Article 10 Mediation
120.7	1. Providers of online intermediation services shall identify in their terms and conditions one or more mediators with which they are willing to engage to attempt to reach an agreement with business users on the settlement, out of court, of any disputes between the provider and the business user arising in relation to the provision of the online intermediation services concerned, including complaints that could not be resolved by means of the internal complaint-handling system referred to in Article 9.	1. Providers of online intermediation services shall identify in their terms and conditions one or more mediators with which they are willing to engage to attempt to reach an agreement with business users on the settlement, out of court, of any disputes between the provider and the business user arising in relation to the provision of the online intermediation services concerned, including complaints that could not be resolved by means of the internal complaint-handling system referred to in Article 9.	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	18/01/2019: <i>Provisional agreement to keep Council text</i> 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

			complaint-handling system referred to in Article 9.	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.
121.1	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.	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.	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.	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.

121A			<u>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.</u>	<i>28/01/2019: To be placed in a recital, text to be drafted</i>
122.1	2. The mediators referred to in paragraph 1 shall meet the following requirements:	2. The mediators referred to in paragraph 1 shall meet the following requirements:	2. The mediators referred to in paragraph 1 shall meet the following requirements:	2. The mediators referred to in paragraph 1 shall meet the following requirements:
123.1	(a) they are impartial and independent;	(a) they are impartial and independent;	(a) they are impartial and independent <u>of both the provider of online intermediation services and the</u>	<i>28/01/2019: EC text</i> (a) they are impartial and independent;

			<u>business user concerned</u> ;	
124.1	(b) their mediation services are affordable for an average business user of the online intermediation services concerned;	(b) their mediation services are affordable for an average business user of the online intermediation services concerned;	(b) their mediation services are affordable for an an <u>average a</u> business user of the online intermediation services concerned;	18/01/2019: <i>Compromise text:</i> (b) their mediation services are affordable for an average business users of the online intermediation services concerned;
125.2	(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;	(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;	(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;	(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;
126.1	(d) they are easily accessible either physically in the place of establishment or residence of the business user, or remotely using communication technologies;	(d) they are easily accessible either physically in the place of establishment or residence of the business user, or remotely using communication technologies;	(d) they are easily accessible either physically in the place of establishment or residence of the business user, or remotely using communication technologies;	(d) they are easily accessible either physically in the place of establishment or residence of the business user, or remotely using communication technologies;
127.1	(e) they are capable of providing their mediation services without undue delay;	(e) they are capable of providing their mediation services without undue delay;	(e) they are capable of providing their mediation services without undue delay;	(e) they are capable of providing their mediation services without undue delay;
128.1	(f) they have a sufficient understanding of general business-to-business commercial relations, allowing them to contribute effectively to the attempt to settle the disputes.	(f) they have a sufficient understanding of general business-to-business commercial relations, allowing them to contribute effectively to the attempt to settle the disputes.	(f) they have a sufficient understanding of general business-to-business commercial relations, allowing them to contribute effectively to the attempt to settle the disputes.	(f) they have a sufficient understanding of general business-to-business commercial relations, allowing them to contribute effectively to the attempt to settle the disputes.

129.6	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. [Am. 120]	3. Providers of online intermediation services and business users shall engage in good faith in any 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.	28/01/2019: <i>Compromise text:</i> 3. <u>Notwithstanding its voluntary nature,</u> providers of online intermediation services <u>and business users</u> shall engage in good faith <u>throughout any mediation [...]</u> <u>attempts conducted pursuant to this Article.</u>
130.1	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,	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	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	24/01/2019: <i>Provisional compromise proposal:</i> 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

	providers of online intermediation services shall in any case bear at least half of the total cost.	to one another. However, providers of online intermediation services shall in any case bear at least half of the total cost, <i>except in cases where the mediator determines that the business user has not acted in good faith or is seeking to abuse the mediation process.</i> [Am. 121]	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.	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.
130A		<i>4a. Providers of online intermediation services shall not be obliged to engage in mediation where a business user brings proceedings on a subject in relation to which that business user has previously brought proceedings seeking mediation and it has been determined by the mediator in that case that the business user has not acted in good faith. Providers of online intermediation services shall</i>		28/01/2019: <i>Text to be included in a recital</i>

		<i>also not be obliged to engage in mediation with business users who have brought forward to the mediator repeated unsuccessful mediation attempts.</i> [Am. 122]		
131.1	5. Any attempt to reach an agreement through mediation on the settlement of a dispute in accordance with this Article shall not affect the rights of the providers of the online intermediation services and of the business users concerned to initiate judicial proceedings at any time during or after the mediation process.	5. 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 <i>before</i> , during or after the mediation process. [Am. 123]	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.	<i>11/01/2019: EP text</i> 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 <i>before</i> , during or after the mediation process.
131A		<i>5a. Providers of online intermediation services shall establish and make easily available to the public information on the functioning and effectiveness</i>		<i>24/01/2019: EP to check if AM can be dropped</i>

		<i>of mediation related to their activities. They shall keep that information up to date. That information shall include the total number of mediation cases, the main types of the mediation cases, the average time period needed to process the mediation cases and aggregated information regarding the outcome of mediation cases. [Am. 124]</i>		
131B			<u>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.</u>	<i>11/01/2019: EP to check</i>
132.1	Article 11 Specialised mediators	Article 11 Specialised mediators	Article 11 Specialised mediators	Identical text (EC, EP, Council), pending agreement on the whole article to be indicated as GREEN
133.1	The Commission shall encourage providers of online intermediation services as well	The Commission <i>and the Member States</i> shall encourage providers of online	The Commission shall encourage providers of online intermediation	<i>24/01/2019: Provisionally agreed</i>

	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.	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. [Am. 125]	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.	The Commission shall <u>in close cooperation with the Member States</u> 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.
134.1				Identical text (EC, EP, Council), pending

	Article 12 Judicial proceedings by representative organisations or associations and by public bodies	Article 12 Judicial proceedings by representative organisations or associations and by public bodies	Article 12 Judicial proceedings by representative organisations or associations and by public bodies	agreement on the whole article to be indicated as GREEN
135.1	1. Organisations and associations that have a legitimate interest in representing business users or in representing corporate website users, as well as public bodies set up in Member States, shall have the right to take action before national courts in the Union, in accordance with the rules of the law of the Member State where the action is brought, to stop or prohibit any non-compliance by providers of online intermediation services or by providers of online search engines with the relevant requirements laid down in this Regulation.	1. Organisations and associations that have a legitimate interest in representing business users or in representing corporate website users, as well as public bodies set up in Member States, shall have the right to take action before national courts in the Union, in accordance with the rules of the law of the Member State where the action is brought, to stop or prohibit any non-compliance by providers of online intermediation services or by providers of online search engines with the relevant requirements laid down in this Regulation.	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.	18/01/2019: <i>Provisional agreement to keep Council text</i> 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.
135A		<i>1a. Member States shall ensure that their relevant public bodies set up a registry of unlawful acts which have been subject to injunction orders before national courts in order to provide a basis for best practice and information to other Member State public bodies or authorities.</i> [Am. 126]		18/01/2019: Council to check
136.1	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:	2. Organisations or associations shall have the right referred to in paragraph 1 only where, at the time of bringing the action, they and for the duration of the action, they continue to meet all of the following requirements: [Am. 127]	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:	18/01/2019: Provisional agreement to keep Council text 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:
137.1	(a) they are properly constituted according to the law of a Member State;	they are properly constituted according to the law of a Member State;	(a) they are properly constituted according to the law of a Member State;	(a) they are properly constituted according to the law of a Member State;
138.1	(b) they pursue objectives that are in the collective interest of the group of business users or corporate website users that they represent;	(b) they pursue objectives, <i>publicly stated in their statute or other relevant governance document</i> , that are in the collective interest of the group of business users or corporate website users that they represent; [Am. 128]	(b) they pursue objectives that are in the collective interest of the group of business users or corporate website users that they represent <u>on a sustained basis</u> ;	<i>18/01/2019: Provisional agreement to keep Council text</i> (b) they pursue objectives that are in the collective interest of the group of business users or corporate website users that they represent <u>on a sustained basis</u> ;
139.1	(c) they are of a non-profit making character.	(c) they are of a non-profit making character <i>and are transparent about their source of funding</i> . [Am. 129]	(c) they are of a non-profit making character-;	<i>18/01/2019: Provisional agreement to keep EC/Council text</i> (c) they are of a non-profit making character-;
139A			<u>(d) their decision-</u>	<i>18/01/2019:</i>

			<u>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.</u>	<i>EC redrafting proposal, Council to check</i> <i>(d) their decision-making is not unduly influenced by any third-party providers of financing, in particular by providers of online intermediation services or of online search engines.</i>
139B			<u>To this end, organisations or associations shall disclose fully and publicly information on the membership, governance structure and finances.</u>	<i>18/01/2019: EP redrafting proposal, Council to check</i> <i>To this end, organisations or associations shall disclose fully and publicly information on their membership and source of funding.</i>
140.1	In Member States where such public bodies have been set up, those public bodies shall have	In Member States where such shall set up or nominate public bodies have been set	<u>2a.</u> In Member States where such public bodies have been set up, those	<i>31/01/2019: Council text</i>

	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.	up, <i>for the purposes of this Article.</i> 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. [Am. 130]	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.	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.
140A			<u>2b. Member States may designate:</u>	31/01/2019: <i>Council text</i> <u>2b. Member States may designate:</u>
140B			<u>(a) organisations or associations established in their Member State that meet at least the</u>	31/01/2019: <i>Council text</i> <u>(a) organisations or associations established</u>

			<u>requirements of paragraph 2 upon their request;</u>	<u>in their Member State that meet at least the requirements of paragraph 2 upon their request;</u>
140C			<u>(b) public bodies set up in their Member State that meet the requirements of paragraph 2a,</u>	31/01/2019: Council text <u>(b) public bodies set up in their Member State that meet the requirements of paragraph 2a,</u>
140D			<u>that are granted the right referred to in paragraph 1 and shall communicate to the Commission their name and purpose.</u>	31/01/2019: Council text <u>that are granted the right referred to in paragraph 1 and shall communicate to the Commission their name and purpose.</u>
140E			<u>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</u>	31/01/2019: Council text <u>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</u>

			<u>updated list shall be published every six months.</u>	<i><u>Journal of the European Union; changes to this list shall be published without delay and the updated list shall be published every six months.</u></i>
140F			<u>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.</u>	31/01/2019: <i>Council text</i> <u>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.</u>
140G			<u>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</u>	31/01/2019: <i>Council text</i> <u>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</u>

			<u>and, where appropriate, revoke the designation if one or more of the criteria are not complied with.</u>	<u>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.</u>
141.1	3. The right referred to in paragraph 1 shall be without prejudice to the rights of business users and corporate website users to individually take action before competent national courts, in accordance with the rules of the law of the Member State where the action is brought, to address any non-compliance by providers of online intermediation services with the relevant requirements laid down in this Regulation.	3. The right referred to in paragraph 1 shall be without prejudice to the rights of business users and corporate website users to individually take action before competent national courts, in accordance with the rules of the law of the Member State where the action is brought, to address any non-compliance by providers of online intermediation services <i>or by providers of online search engines</i> with the relevant requirements laid down in this Regulation. [Am. 131]	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 <u>start any</u> action before competent national courts, in accordance with the rules of the law of the Member State where the action is brought, <u>which is based on individual rights and aims at stopping</u> to address any non-compliance by providers of online intermediation services <u>or providers of online search engines</u> with the relevant requirements laid down in this Regulation.	<i>18/01/2019:</i> <i>Provisional agreement to keep Council text</i> 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 <u>start any</u> action before competent national courts, in accordance with the rules of the law of the Member State where the action is brought, <u>which is based on individual rights and aims at stopping</u> to address any non-compliance by providers of online intermediation services <u>or providers of online search engines</u> with the relevant requirements laid down in this Regulation.

141A		<i>Article 12a Enforcement authorities</i>	<u>Article 12a Enforcement</u>	
141B		<i>1. Each Member State shall designate a body or bodies responsible for adequate and effective enforcement of this Regulation. The body responsible for the effective enforcement of this Regulation may be the same body as referred to in Article 12.</i>	<u>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.</u>	GA
141C		<i>2. Member States shall lay down the rules setting out the measures applicable to infringements of the provisions of this Regulation and shall ensure that they are implemented. The measures provided for shall be effective, proportionate and dissuasive.</i>		<i>31/01/2019: EP text:</i> <i>2. Member States shall lay down the rules setting out the measures applicable to infringements of the provisions of this Regulation and shall ensure that they are implemented. The measures provided for shall be effective, proportionate and dissuasive.</i>
141D		<i>3. The measures referred to in paragraph 2 shall be communicated to the Commission and made</i>		

		<i>publicly available on the Commission's website. [Am. 132]</i>		
141E		<i>Article 12b Monitoring</i>		
141F		<i>Member States shall closely monitor the application of this Regulation and shall designate national authorities to require providers of online intermediation services and online search engines to submit relevant information necessary for the monitoring and enforcement of this Regulation by the body or bodies referred to in Article 12a. The information gathered by those authorities shall be provided to the Commission and to the EU Platform Observatory upon request. [Am. 133]</i>		GA
142.1	Article 13 Codes of conduct	Article 13 Codes of conduct	Article 13 Codes of conduct	Article 13 Codes of conduct
143.1	1. The Commission shall	1. The Commission shall	1. The Commission shall	18/01/2019:

	encourage the drawing up of codes of conduct by providers of online intermediation services and by organisations and associations representing them, intended to contribute to the proper application of this Regulation, taking account of the specific features of the various sectors in which online intermediation services are provided, as well as of the specific characteristics of micro, small and medium-sized enterprises.	encourage the drawing up of codes of conduct by providers of online intermediation services and by organisations and associations representing them, <i>together with business users including SMEs and microenterprises and their representative organisations</i> , 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. [Am. 134]	encourage the drawing up of codes of conduct by providers of online intermediation services and by organisations and associations representing them, <u>that are</u> 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.	<i>Provisional compromise suggestion to combine EP and Council texts</i> 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, <i>together with business users including SMEs and microenterprises and their representative organisations, <u>that are</u></i> 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.
144.1	2. The Commission shall encourage the drawing up of codes of conduct by providers of online search engines and by organisations and associations representing them, intended to contribute to the proper	2. The Commission shall encourage the drawing up of codes of conduct by providers of online search engines and by organisations and associations representing them, intended to contribute	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, <u>that are specifically</u> intended to	<i>18/01/2019: Provisional agreement to keep Council text</i> 2. The Commission shall encourage the drawing up of codes of conduct by providers

	application of Article 5(2) and (3).	to the proper application of Article 5(2) and (3).	contribute to the proper application of Article 5(2) and (3).	of online search engines and by organisations and associations representing them, <u>that are specifically</u> intended to contribute to the proper application of Article 5(2) and (3).
144A		<i>2a. Where an online intermediation service is primarily involved in one single sector where a sector specific code of conduct exists and is widely used, the Commission shall encourage the provider of the online intermediation service to adopt and implement the sector specific code of conduct. [Am. 135]</i>		<i>28/01/2019: Compromise text:</i> <u>2a. The Commission shall encourage the providers of the online intermediation service to adopt and implement sector specific codes of conducts, where such sector specific codes of conduct exist and are widely used.</u>
144B		<i>Article 13 a EU Platform Observatory</i>		<i>Flexibility and CLS to check</i>
144C		<i>In addition to those set out in Article 2 of Commission Decision C(2018) 2393, the EU Platform Observatory shall have the following tasks:</i>		<i>Flexibility and CLS to check</i>
144D		<i>(a) monitoring and evaluating the implementation of this</i>		<i>Flexibility and CLS to check</i>

		<i>Regulation and in particular analysing the effects of Annex I on the market, taking into account the jurisprudence of Union and national courts; and</i>		
144E		<i>(b) making recommendations in accordance with Article 14 to the European Commission for the review of this Regulation. [Am. 136]</i>		<i>Flexibility and CLS to check</i>
145.2	Article 14 Review	Article 14 Review	Article 14 Review	Flexibility within the framework of a compromise package. Provisions where there is no flexibility towards EP position could be addressed at the level of this article.
146.3	1. By [date: three years after the date of entry into force], and subsequently every three years, the Commission shall evaluate this Regulation and report to the European Parliament, the Council and the European Economic and Social Committee.	1. By ... [date: three years 18 months after the date of entry into force application], and subsequently every three years, the Commission shall evaluate this Regulation and report to the European Parliament, the Council and the European Economic and Social Committee. [Am. 137]	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.	GA
147.1	2. The first evaluation of this Regulation shall be carried out, in particular, with a view to assessing the compliance with,	2. The first evaluation of this Regulation shall be carried out, in particular, with a view to the following:	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.		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.	
148.		<i>(a) assessing the compliance with, and impact on the online platform economy of, the obligations laid down in Articles 5, 6, 7 and 8 3 to 8;</i>		
148A		<i>(b) assessing the impact and effectiveness of any established codes of conduct to improve fairness and transparency;</i>		
148B		<i>(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</i>		

		<i>practices continue to be widespread;</i>		
148C		<i>(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;</i>		
148D		<i>(e) assessing the effect of this Regulation on any possible imbalances in the relationships between providers of operating systems and their business users;</i>		
148E		<i>(f) assessing whether the scope of the Regulation, especially as regards the definition of ‘business user’, is suitable in that it does not encourage bogus self-employment;</i>		
148F		<i>(g) reviewing, following recommendations from the Platform Observatory in accordance with Article 13a,</i>		

		<i>the list of unfair commercial practices in Annex I;</i>		
149.		<i>The evaluation shall establish 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. Following the evaluation, the Commission shall take appropriate measures, which may include legislative proposals. [Am. 138]</i>		
150.1	3. Member States shall provide any relevant information that the Commission may require for the purposes of drawing up the report referred to in paragraph 1.	3. Member States shall provide any relevant information that the Commission may require for the purposes of drawing up the report referred to in paragraph 1.	3. Member States shall provide any relevant information <u>they have</u> that the Commission may require for the purposes of drawing up the report referred to in paragraph 1.	
151.1	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	4. In carrying out the evaluation of this Regulation, the Commission shall take into account the opinions and reports presented to it by the group of experts for the EU Platform Observatory established in accordance with	4. In carrying out the evaluation of this Regulation, the Commission shall take into account <u>inter alia</u> 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.	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. <i>and having regard to the additional tasks of the EU Platform Observatory as established in Article 13a.</i> [Am. 139]	in accordance with the Commission Decision C(2018)2393. <u>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.</u> It shall also take into account the content and functioning of any codes of conduct referred to in Article 13, where appropriate.	
152.1	Article 15 Entry into force and application	Article 15 Entry into force and application	Article 15 Entry into force and application	
153.8	1. This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.	1. This Regulation shall enter into force on the twentieth day following that of its publication in the <i>Official Journal of the European Union</i> .	1. This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.	Identical text (EC, EP, Council), pending agreement on the whole article to be indicated as GREEN
154.1	2. It shall apply from [date: six months following the day of its publication].	2. It shall apply from ... [date: six nine months following the day of its publication]. [Am. 140]	2. It shall apply from [date: six twelve months following the day of its publication].	GA
155.1	This Regulation shall be	This Regulation shall be	This Regulation shall be	Identical text (EC, EP,

	binding in its entirety and directly applicable in all Member States.	binding in its entirety and directly applicable in all Member States.	binding in its entirety and directly applicable in all Member States.	Council), pending agreement on the whole article to be indicated as GREEN
156.1	Done at Brussels,	Done at...,	Done at Brussels,	
157.1	For the European Parliament For the Council	For the European Parliament For the Council	For the European Parliament For the Council	Identical text (EC, EP, Council), pending agreement on the whole article to be indicated as GREEN
158.1	The President The President	The President The President	The President The President	
	COMMISSION'S PROPOSAL	EP AMENDMENTS	COUNCIL AMENDMENTS	COMPROMISE PROPOSALS
159.		<i>Annex I Commercial practices to be regarded as unfair in all circumstances</i>		
160.		<i>(a) Imposing clauses unilaterally on the business users with the purpose of transferring liability to them in a way that contradicts the obligations on online intermediation services established in Articles 12 to 15 of Directive 2000/31/EC of the European Parliament and of the Council⁹;</i> <i>⁹ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000</i>		<i>No compromise</i>

		<i>on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') (OJ L 178, 17.7.2000, p. 1).</i>		
161.		<i>(b) Proposing retroactive contract clauses which are to the detriment of the business;</i>		<i>Consider EP text as transparency obligation in art. 3: “Providers of online intermediation services shall ensure that their T&Cs include reference to retroactive clauses, when such clauses are applied.” or (where relevant, include information on whether and under which circumstances the provider of online intermediary services can make use of retroactive modifications to the terms and conditions [besides in situations where this is a regulatory requirement])</i>
162.		<i>(c) Maintaining the legal right to use the business user's information beyond what was specified in the contract after the contract</i>		<i>To supplement transparency obligations in art. 7 “2. (a) whether the provider of online intermediation services has access to</i>

		<i>between the online intermediary service provider and the business user has expired;</i>		<i>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, whether that data is retained following termination of service and if that data is provided to third parties;”</i>
163.		<i>(d) Maintaining any clauses or pursuing any practices which make it unduly difficult for a business user to exercise its contractual right to terminate its relationship with an online intermediation service provider or which unfairly discourages a business user from terminating an agreement;</i>		<i>Consider EP text as transparency obligation in art. 3: “Providers of online intermediation services shall ensure that their T&Cs will include information on the conditions under which business users can terminate the contractual relationship with the provider of online intermediary services (+ recital explaining that conditions for termination shall be proportionate and not unduly difficult).</i>
164.		<i>(e) Interfering in the commercial relationship between competing business users and consumers outside</i>		<i>31/01/2019: No text</i>

		<i>of those activities that are initiated on the online intermediation service.</i> [Am. 141]		
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