

Fairness and transparency for business users of online intermediation services

2018/0112(COD) - 17/04/2019 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 632 votes to 22, with 3 abstentions, a legislative resolution on promoting fairness and transparency for business users of online intermediation services.

The European Parliament's position adopted at first reading under the ordinary legislative procedure amended the Commission proposal as follows:

Subject-matter

The purpose of this Regulation is to contribute to the proper functioning of the internal market by laying down rules to ensure that business users of online intermediation services and corporate website users in relation to online search engines are granted appropriate transparency, fairness and effective redress possibilities.

This Regulation shall not apply to online payment services or to online advertising 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.

Terms and conditions

Providers of online intermediation services shall ensure that their terms and conditions:

- are drafted in plain and intelligible language;
- are easily available to business users at all stages of their commercial relationship with the provider of online intermediation services, including in the pre-contractual stage;
- set out the 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;
- include information on any additional distribution channels and potential affiliate programmes through which providers of online intermediation services might market goods and services offered by business users;
- include general information regarding the effects of the terms and conditions on the ownership and control of intellectual property rights of business users.

Providers of online intermediation services shall notify, on a durable medium, to the business users concerned any proposed changes of their terms and conditions.

The proposed changes shall not be implemented before the expiry of a notice period which is reasonable and proportionate to the nature and extent of the envisaged changes 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 proposed changes. Providers of online intermediation services shall grant longer notice periods when this is necessary to allow business users to make technical or commercial adaptations to comply with the changes.

The business user concerned shall have the right to terminate the contract with the provider of online intermediation services before the expiry of the notice period.

In general, submitting new goods or services, including software applications, to the online intermediation services should be considered to be clear affirmative action, resulting in the waiving, by the business user, of the notice period required for changes to the terms and conditions.

However, in cases where the reasonable and proportionate notice period is longer than 15 days because the changes to the terms and conditions require the business user to make significant technical adjustments to its goods or services, the notice period should not be considered to be automatically waived where the business user submits new goods and services.

Restriction, suspension and termination

Where a provider of online intermediation services decides to restrict or 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 restriction or suspension taking effect, with a statement of reasons for that decision on a durable medium.

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.

In the case of restriction, suspension or termination, the provider of online intermediation services shall give the business user the opportunity to clarify the facts and circumstances in the framework of the internal complaint-handling process referred to in Regulation.

Ranking of internet sites

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

Providers of online intermediation services and providers of online search engines shall not be required to disclose algorithms or any information that, with reasonable certainty, would result in the enabling of deception of consumers or consumer harm through the manipulation of search results.

Ancillary goods and services

A new article stipulates that where ancillary goods and services, including financial products, are offered to consumers through the online intermediation services, either by the provider of online intermediation services or by third parties, the provider of online intermediation services shall set out in its 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 its own ancillary goods and services through the online intermediation services.

Judicial proceedings by representative organisations or associations and by public bodies

The decision-making process of associations and bodies shall not be unduly influenced by any third party providers of financing, in particular by providers of online intermediation services or of online search

engines. To this end, organisations or associations shall fully and publicly disclose information on their membership and source of financing.

The Commission shall encourage Member States to exchange best practices and information with other Member States, based on registries of unlawful acts which have been subject to injunction orders before national courts, where such registries are set up by relevant public bodies or authorities.

Control

The Commission, in close cooperation with Member States, shall closely monitor the impact of this Regulation on relationships between online intermediation services and their business users and between online search engines and corporate website users. Member States shall assist the Commission by providing, upon request, any relevant information gathered including about specific cases.

The Commission shall encourage the drawing up of codes of conduct by providers of online intermediation services and by organisations and associations representing them, together with business users, including SMEs and their representative organisations.