
The proposed Regulation on promoting fairness and transparency for business users of online intermediation services (P2B)

HOW WILL IT IMPACT THE PLATFORM ECONOMY?

The proposed ‘Platform-to-Business’ Regulation

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Background to the proposed Regulation

WHAT WAS THE ORIGINAL INTENTION?

The Commission seeks to “address the current situation where European **businesses cannot fully exploit** the potential of the online platform economy due to a number of **potentially harmful trading practices** and a **lack of effective redress**”, as well as online platforms facing **increasing regulatory fragmentation**.



WHAT IS THE SCOPE?

The requirements are applicable to **online intermediation services** and **online search engines** which offer goods or services in the EU as an intermediary.

WHAT IS THE LEGISLATIVE PROCESS?

The Regulation will be adopted under the **ordinary legislative procedure**, where the European Parliament is co-legislator with the Council of the EU.



Background to the proposed Regulation

WHERE ARE WE IN THE LEGISLATIVE PROCESS?

- ✓ **April 2018:** European Commission publishes proposed Regulation.
- ✓ **September 2018:** European Parliament's IMCO Committee publishes Draft Report. ITRE, JURI and TRAN Committees publish Draft Opinions.
- ✓ **September 2018:** The Council of the EU begins negotiations.
- ✓ **October 2018:** Parliamentary Committees table amendments (around 2,000).
- ✓ **November 2018:** ITRE, JURI and TRAN Committees adopt their Opinions.
- ✓ **29 November 2018:** Council of the EU adopts its general approach.
- ▶ **6 December 2018:** European Parliament IMCO Report adoption expected.
- **Q4 2018/Q1 2019:** Trilogue negotiation phase.
- **Q2 2019:** Publication in the Official Journal and entry into force expected.



Key provisions & EU institutions' positions

Transparency and notice periods for business users

The European Commission's proposal

- T&Cs must be clearly available and any planned changes to these must be communicated **15 days in advance** to business users.
- Business will be **able to waive this notice period**.

Examples of proposed changes in Opinions

- The notice period should not apply when there is an **immediate threat of harm to consumers or business users**.
- Business users should be informed about any **additional distribution channels** through which their product is marketed.

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- Terms and conditions should be written in **“plain and intelligible”** language.
- **Editorial changes** should not require a notice period to be given.



Example – Food delivery platforms

Reasons for suspension and termination

The European Commission's proposal

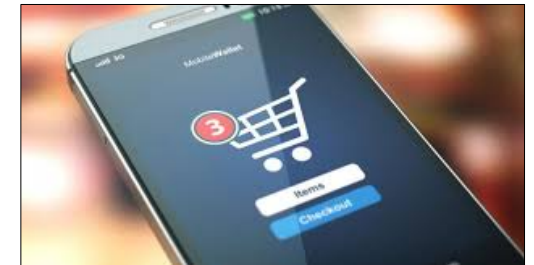
- Platforms will have to give business users a **statement of reasons if their account is suspended/terminated**.
- This should contain the **specific facts** that led to the decision.

Examples of proposed changes in Opinions

- Platforms would have to **give notice for termination or suspension** of business users' accounts.
- Business users would be permitted to **re-establish compliance** before termination.

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- **30 days notice** should be given before termination.
- The obligation to notify business users in advance of suspension or termination should not be necessary if platforms have a **legal obligation** to do so.



Example – Online marketplaces

Ranking parameters used by platforms

The European Commission's proposal

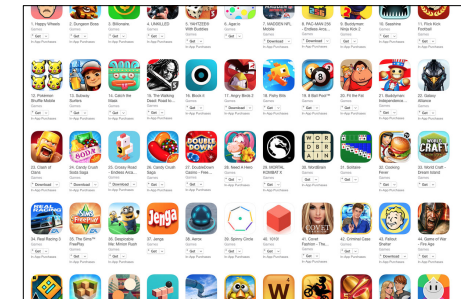
- Platforms must set out in T&Cs the **main parameters determining ranking** and the reasons for the **relative importance** of those main parameters.
- Detail shall be provided where businesses have **paid to appear higher** in search results.

Examples of proposed changes in Opinions

- Paid-for ranks would have to be **labelled “SPONSORED”**
- Parameters would have to be **objective and non-discriminatory**, and should avoid prioritising platforms' own products.
- Descriptions should be **publicly** available.

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- **Only a description of the relative importance**, rather than a reason for this, should be provided.



Example – App stores

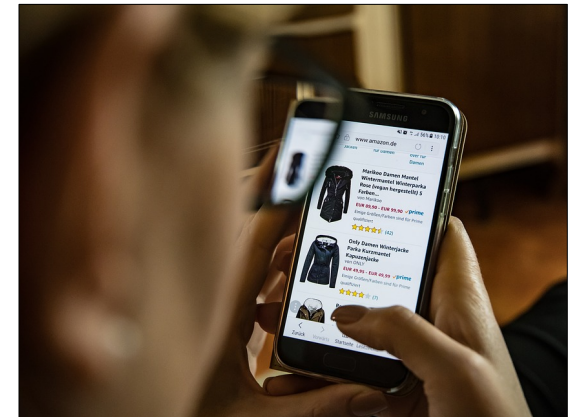
Declarations of differentiated treatment by platforms

The European Commission's proposal

- Platforms would have to set out in T&Cs if any goods or services are given preferential treatment via access to **data, rankings, remuneration** for the use of the platform, or **access to services** directly connected or ancillary to the platform.

Examples of proposed changes in Opinions

- Platforms would have to be transparent on **competing products or services** provided by the platform or subsidiaries, and provide the possibility for consumers to clearly choose between these products and third party sellers' products.
- Platforms would have to be transparent about **the ranking of ancillary goods or services**.



Example – E-commerce sites

Data access and sharing

The European Commission's proposal

- Platforms will have to **disclose what data they can access** as a result of a business users' activities on a platform.
- Platforms will have to alert business users to the **access they have to data which they generate**.
- Platforms will have to alert business users to the **access they have to data generated by other business users**.

Examples of proposed changes in Opinions

- Platforms would have to get a **business users' consent** before sharing their data with a third party. Platforms would be **required to share data** with business users on their use of the platform. Business users would have to make sure **the data they provide to platforms is accurate**.

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- Platforms should be transparent about the **data they share with third parties**.



Example – Metasearch sites

Justifications for restrictions to offer products via other channels

The European Commission's proposal

- Platforms will have to **justify their use of clauses that restrict business users'** pricing in their T&Cs.
- The Regulation will not infringe on Member States' right to prohibit against their use.

Examples of proposed changes in Opinions

- Platforms would be **banned from using most favoured nation (MFN) clauses.**

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- The **Commission's text is maintained**, but with an additional declaration that the Regulation is without prejudice to national laws.



Example – Online hotel bookings

Means for business users to address concerns

The European Commission's proposal

- Platforms will have to establish **internal complaints handling systems** to allow business users to lodge complaints.
- **Third party mediators** will also have to be listed in case business users feel that they are unable to resolve complaints through internal channels. **Platforms would have to bear at least half of these costs.**
- Organisations and associations with legitimate interests may **represent a group of business users** in legal proceedings against a platform.

Examples of proposed changes in Opinions

- Business users would have to **share costs.**
- The Commission should produce **guidelines on mediation.**

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- The Council has **added safeguards** for the collective redress process, including banning other platforms from influencing the decisions of bodies launching action through finance.







Example – Price comparison sites

Overview of opinions in the European Parliament

Overview of the positions of the political groupings

WHERE DO THE PARTY GROUPS STAND?

				
Terms & conditions	↓	↑	↓	↓
Suspension and termination	↑	↑	↓	↓
Ranking	↑	↑	↓	↓
Differentiated treatment	↓	↑	↓	↓
Access to data	↑	↑	↓	N/A
MFN clauses	↓	↑	N/A	N/A
Processing complaints & mediation	↓	↑	↓	↓



Amendments would go further than the proposal



Amendments would lessen the impact of the proposal

Significant aspects of the Parliament's Opinions

WHAT WOULD THE AMENDMENTS MEAN IN PRACTICE?

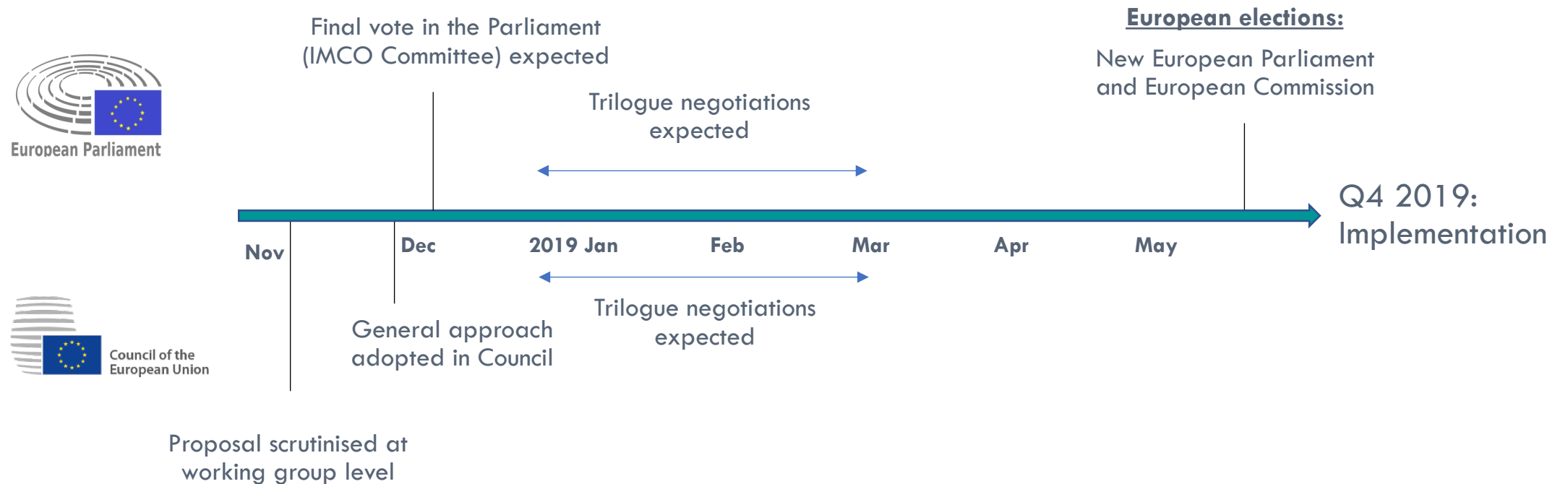
If incorporated into the final Report, the Parliament's position would be to introduce:

- Mandatory aggregate data sharing between platforms and business users
- Bans on the use of price parity clauses
- Obligatory processes for verifying reviews
- Liability for platforms for misleading information that business users have given them

Next steps and timeline

Next steps with the proposed Regulation

KEY MILESTONES AHEAD OF THE ENTRY INTO FORCE



Other EU legislative activity affecting the platform economy

Other EU legislative activity affecting the platform economy

WHAT ELSE IS SCHEDULED TO BE FINALISED UNDER THE JUNCKER COMMISSION?



The proposed Directives on the taxation of the digital economy



The proposed revision of the Directive on consumer protection rules



The proposed Regulation on tackling terrorist content online



The proposed Directive harmonising and simplifying rules in the VAT system



The proposed e-Privacy Regulation



The proposed Directive on contracts for the supply of digital content



The proposed Directive on contracts for the online and other distance sales of goods





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