



26/10/2018

**AMENDMENTS: 16**

**Francis Zammit Dimech** (draft opinion)

Promoting fairness and transparency for business users of online intermediation services

**Proposal for a regulation** COM(2018)0238 – C8-0165/2018 – 2018/0112(COD)

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Amendments per language:

EN: 16

## Amendment 1

Axel Voss

### Proposal for a regulation

#### Recital 21 a (new)

*Text proposed by the Commission*

*Amendment*

***(21a) Business users should be granted full control over their own intellectual property rights. Providers of online intermediated services should make use of these rights only upon explicit consent of the business user. The terms of use of such rights should be adhered to. The intellectual property rights of third parties should also be respected.***

Or. en

## Amendment 2

Axel Voss, Ivan Štefanec

### Proposal for a regulation

#### Recital 25

*Text proposed by the Commission*

*Amendment*

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

(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 ***including whether the case was brought in good faith with a reasonable prospect of success.*** To that aim, the mediator should suggest which proportion is reasonable in the individual case.

Or. en

### *Justification*

*This amendment reflects changes made to Art 10 (4) to ensure that mediation is not abused by bad actors.*

#### **Amendment 3**

**Axel Voss, Ivan Štefanec**

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

#### **Article 9 – paragraph 5 a (new)**

*Text proposed by the Commission*

*Amendment*

**5a. The obligations set out in paragraph 2 of this Article shall not apply to complaints brought by business users reasonably determined by the relevant online intermediation service provider as being abusive, spurious or vexatious.**

Or. en

### *Justification*

*This is a safeguard to prevent actors from abusing the internal complaint handling mechanism by repeatedly lodging unsubstantiated complaints that are not upheld.*

#### **Amendment 4**

**Axel Voss, Ivan Štefanec**

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

#### **Article 10 – paragraph 1 – subparagraph 1**

*Text proposed by the Commission*

*Amendment*

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

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 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.

online intermediation services concerned, **which** could not be resolved by means of the internal complaint-handling system referred to in Article 9.

Or. en

#### *Justification*

*This amendment creates sequencing between the internal complaints system and external mediation. Only after the internal complaint handling mechanism has failed to terminate a dispute between a business user and an online service provider they should be able to move to mediation which is more time consuming and costly for both parties.*

### **Amendment 5**

**Axel Voss, Ivan Štefanec**

### **Proposal for a regulation**

#### **Article 10 – paragraph 3**

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

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.

##### *Amendment*

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

Or. en

#### *Justification*

*Both platforms operators and business users should engage in mediation in good faith.*

**Amendment 6**  
**Axel Voss, Ivan Štefanec**

**Proposal for a regulation**  
**Article 10 – paragraph 4**

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

*Justification*

*Mediation costs should be decided based on the merits of the case and the size of the parties taking part in mediation. Requirement for platforms to bear at least 50% of the total cost will support bringing unfounded actions by business users who will not fear financial consequences which will be suffered only by platforms.*

**Amendment 7**  
**Axel Voss, Ivan Štefanec**

**Proposal for a regulation**  
**Article 10 – paragraph 5 a (new)**

*Text proposed by the Commission*

*Amendment*

***5a. Providers of online services shall not be obliged to engage in mediation with any business user it reasonably determines is a repeat infringer, including***

***any business user who has brought repeated unsuccessful mediation claims.***

Or. en

*Justification*

*This is a safeguard to prevent actors from abusing the mediation mechanism by repeatedly lodging unsubstantiated complaints.*

**Amendment 8**

**Axel Voss, Ivan Štefanec**

**Proposal for a regulation**

**Article 12 – paragraph 1**

*Text proposed by the Commission*

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.

*Amendment*

1. ***After all the other options to settle a dispute between a platform and a business user provided for in this regulation in Article 9 and Article 10 have been exhausted,*** organisations and associations that have a ***genuine long-standing and*** legitimate interest in representing business users or in representing corporate website users ***and that are authorised and supervised by appropriate Member State public bodies,*** 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.

Or. en

## *Justification*

*It is important to structure collective redress to make sure the mechanism is not abused. Some safeguards which will prevent it need to be built in. By ensuring that organizations able to bring an action are (a) properly recognized and certified by EU countries and (b) be transparent about who finances them will reduce the likelihood of abuse by bad actors.*

### **Amendment 9**

**Axel Voss, Ivan Štefanec**

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

##### **Article 12 – paragraph 2 – subparagraph 1 – introductory part**

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

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:

###### *Amendment*

Organisations or associations shall have the right referred to in paragraph 1 only where, at the time of bringing the action, **and for the duration of the action, they continue to** meet all of the following requirements:

Or. en

### **Amendment 10**

**Axel Voss, Ivan Štefanec**

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

##### **Article 12 – paragraph 2 – subparagraph 1 – point a**

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

(a) they are properly constituted according to the law of a Member State;

###### *Amendment*

(a) they are properly constituted according to the law of a Member State **and hold a current qualified entity licence issued by the relevant public body of that Member State.**

Or. en

**Amendment 11**  
**Axel Voss, Ivan Štefanec**

**Proposal for a regulation**  
**Article 12 – paragraph 2 – subparagraph 1 – point b**

*Text proposed by the Commission*

(b) they pursue objectives that are in the collective interest of the group of business users or corporate website users that they represent;

*Amendment*

(b) they pursue objectives that are in the collective interest of the group of ***a majority of*** business users or corporate website users that they represent, ***which group must consist of at least 10 independent business users or corporate website users;***

Or. en

**Amendment 12**  
**Axel Voss, Ivan Štefanec**

**Proposal for a regulation**  
**Article 12 – paragraph 2 – subparagraph 1 – point c**

*Text proposed by the Commission*

(c) they are of a non-profit making character.

*Amendment*

(c) they are of a non-profit making character ***and are transparent about the source of funding for bringing and continuing the action and can demonstrate that they have sufficient financial resources to represent the best interests of their business or corporate website users and to meet any adverse costs should the action fail;***

Or. en

### **Amendment 13**

**Axel Voss, Ivan Štefanec**

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

**Article 12 – paragraph 2 – subparagraph 1 – point c a (new)**

*Text proposed by the Commission*

*Amendment*

*(ca) they comply with all codes of ethics and conduct of the public body issuing their licence, and demonstrably act in accordance with the wider public interest;*

Or. en

### **Amendment 14**

**Axel Voss, Ivan Štefanec**

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

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

*Text proposed by the Commission*

*Amendment*

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.

In Member States where such public bodies have been set up, those public bodies shall have the right referred to in paragraph 1, ***and shall be entitled to issue the required licence to an organisation or association***, 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.

Or. en

**Amendment 15**  
**Axel Voss, Ivan Štefanec**

**Proposal for a regulation**  
**Article 12 – paragraph 2 – subparagraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***Where a Member State public body issues a qualified entity licence to an organisation or association, that public body shall be responsible for regularly reviewing the status and conduct of that organisation or association to ensure that it is complying with the requirements of this Article. The Member State public body shall immediately revoke the qualified entity licence of any organisation or association found to not to be in compliance with the requirements of this Article.***

Or. en

**Amendment 16**  
**Axel Voss, Ivan Štefanec**

**Proposal for a regulation**  
**Article 15 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

2. It shall apply from [date: **six** months following the day of its publication].

2. It shall apply from [date: **twelve** months following the day of its publication].

Or. en

*Justification*

*Platforms need to be given sufficient time to be able to comply with the provisions of this regulation.*