

Logaras & Associates

Information technology
Regulation on platform-to-business
relations

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Online platforms offering intermediation services (e.g. online marketplaces, app stores and search engines) have changed the typical structure of transactions concluded in a digital environment from bilateral to a triangle and have acquired an enormous degree of economic power and cultural influence. In the EU only, out of 27 start-ups that reached unicorn status in 2019 (\$1 billion valuation), nine are based on a platform structure.

On July 12, 2020, the Regulation on platform – to – business relations, promoting fairness and transparency for business users of online intermediation services, also called the P2B Regulation (Regulation (EU) 2019/1150), will become applicable and online platforms, as well as online search engines, will have to comply by then with the new requirements.

The P2B Regulation is part of the legislative package comprising in a number of instruments addressing issues relevant for the Digital Single Market from various different perspectives, including the E-Commerce Directive, the GDPR, the Geo Blocking Regulation, the Copyright in the Digital Single Market Directive, together with the ongoing work on the Digital Services Act, as announced by the European Commission¹.

Purpose of the Regulation

The Regulation's aim is to safeguard the interests of undertakings who use intermediate services to reach consumers and more particularly:

- a. **business users** of online intermediation services offering their services to consumers for purposes relating to their trade, business, craft or profession, and
- b. **corporate website users** in relation to online search engines.

Scope of application

The Regulation applies to providers of intermediation services and online search engines, regardless of where they are established, irrespective of monetary payment, provided that:

- a. the business users or corporate website users are established in the Union **and**

¹ On June 2, 2020 the European Commission initiated an open public consultation in relation to the upcoming Digital Services Act (DSA) legislative package (expected to be put forward in late 2020).

b. the business users or corporate website users offer their goods or services to consumers located (but not necessarily residing or having the nationality of any Member State) in the Union, at least for part of the transaction, irrespective of where said transaction is ultimately concluded.

Examples of online intermediation services are online e-commerce marketplaces, including collaborative ones on which business users are active, online software applications services, such as application stores, and online social media services.

On the other hand, the Regulation does not apply to peer-to-peer online intermediation services without the presence of business users, **pure business-to-business online intermediation services which are not offered to consumers**, online advertising tools and online advertising exchanges which are not provided with the aim of facilitating the initiation of direct transactions and which do not involve a contractual relationship with consumers.

In addition, the Regulation does 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.

Key provisions of the P2B Regulation

Terms and conditions. Providers of online intermediation services should ensure a higher degree of clarity, transparency and accessibility of their terms and conditions. Further, as a general rule, **changes to the terms should be notified** on a durable medium to business users concerned within a set notice period which is reasonable and proportionate in light of the specific circumstances and which is **at least 15 days**.

Non-compliant terms and conditions should be null and void, that is, deemed to have never existed, with effects *erga omnes* and *ex tunc*.

Termination of services. In principle, a notice period of **at least 30 days** shall apply where the provider of intermediation services decides to **terminate the provision of the whole of its online intermediation services** to a given business user.

Ranking. The transparency and clarity bar, both for providers of online intermediation services and search engines, is also high in relation to the main parameters determining ranking and the reasons for their relative importance.

Differentiated treatment. Where providers of online intermediation services or online search engines or business users / corporate website users that they control, offer to consumers same goods or services with business users / corporate website users, they shall include in their terms and conditions a description of any differentiated treatment which they give, or might give, in relation to such goods or services.

Contractual terms. The Regulation aims at ensuring a minimum threshold of fair dealing and access to data between providers of online intermediation services and business users and stipulates specific contractual clauses that must be part of the relevant contracts.

Access to data. Providers of online intermediation services must include in their terms and conditions a description on what data generated through their services can be accessed, by whom and under what conditions.

Restrictions to offer different conditions through other means. Fair competition considerations are also introduced under the P2B Regulation: where restriction(s) to the ability of business users to offer the **same goods and services** to consumers under different conditions **through other means** are imposed by the providers of online intermediation services restrict, the grounds for that restriction(s) must be included in their terms and conditions and made easily available to the public. **It should be stressed, however, that this transparency obligation should not be understood as affecting the assessment of the legality of such restrictions under other laws, including in the areas of competition and unfair commercial practices, and the application of such laws.**

Internal complaint system handling. Providers of online intermediation services shall provide for a – free to use - internal system for handling the complaints of business users, based on the principles of transparency and equal treatment applied to equivalent

situations. Information on the functioning and effectiveness of the internal complaint-handling system shall be made easily available to the public.

Mediation. Two or more mediators must be identified by providers of online intermediation services in their terms and conditions, with which they are willing to attempt to reach an out-of-court settlement agreement with business users, of any disputes between the provider and the business user. It should be clarified that mediation proceedings are voluntary and do not affect past, concurrent or future recourse to judicial proceedings.

The previous two obligations do not apply to providers of online intermediation services that are small enterprises within the meaning of the Annex to Recommendation 2003/361/EC (i.e. an enterprise which employs fewer than 50 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 10 million).

What should providers and business users do?

P2B Regulation will become applicable from July 12, 2020, onwards. Companies offering online intermediation services or online search engine services must review their terms and conditions and establish the procedures and mechanisms set out in the Regulation. Conversely, business users and corporate website users should require from their providers to comply with the above rules.

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