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EU Platform-to-Business Regulation (‘P2B’ Regulation)

Briefing for ETC Members, December 2020

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1. Introduction

In July 2020, the [Platform-to-Business Regulation \(EU\) 2019/1150 \("P2B Regulation"\)](#) on promoting fairness and transparency for business users of online platforms and search engines became directly applicable in EU Member States.

New rules were initiated to fight unfair contracts and trading practices in platform-to-business relations. The goal of the P2B Regulation is to put in place a harmonised EU framework for minimum transparency and redress rights that would **protect companies that depend on online platforms for reaching consumers, while at the same time safeguarding platforms' innovation potential**. This includes hotel and travel booking platforms, online marketplaces, fare aggregators, price comparison websites and others.

Background: Prior to this proposal, it was acknowledged that while a number of Member States had already adopted at national level some laws specifically addressing online platforms' behaviour, there was no specific EU legislation on P2B relationships. EU consumer protection law was limited to 'business-to-consumer' ('B2C') transactions, and existing measures targeting harmful trading practices are applicable only to the offline world. The European Commission considered that existing rules were not applicable to the harmful P2B online practices, given the specificities of online business models and the role of algorithms.

2. Changes Introduced by the New Rules

In a nutshell: The new Regulation constitutes a regulatory attempt to establish a fair, trusted and innovation-driven ecosystem in the online platform economy. The new rules, inter alia, **harmonise transparency rules applicable to contractual terms and conditions, ranking of goods and services and access to data**. For example, hotels using booking platforms should have greater clarity on criteria determining their position in search results and protection from unfair terms and conditions.

Providers of online intermediation services (e.g. Skyscanner, Booking.com) and online search engines (e.g. Google Search) are required to implement a set of measures to ensure transparency and fairness in the contractual relations they have with online businesses (e.g. hotels and restaurants businesses), which use such online platforms to sell and provide their services to customers in the EU. Online platform intermediaries are required to **make their standard terms and conditions more transparent, easily available and announce changes well in advance**. This includes the type of data that is shared with business users by the online intermediation service (i.e. data which businesses or consumers provide when using the online intermediation services).

Another change concerns **transparency in ranking**, as marketplaces and search engines need to disclose the main parameters they use to rank goods and services on their site, to help sellers understand how to optimise their presence. However, providers of online intermediation services and of online search engines are not required to disclose algorithms nor any information that would impede their ability to act against bad faith manipulation of ranking by third parties.

Online intermediation platforms are also required to set up an **internal complaint handling system** allowing businesses to lodge complaints directly with the platform for example, as a result of an action or decision taken by them or as a result of a technological problem. Platforms need to respond to complaints appropriately and communicate the outcome to businesses. Online platform intermediaries are also required to name at least one **mediator** with whom they are willing to engage in settling

disputes out of court. Small enterprises with less than 50 staff members and generating less than €10 million turnover are exempted from both obligations on account of the higher compliance costs they may entail.

There is also a new option for organisations and associations representing business users' interest to take action before competent national courts to stop or prohibit non-compliance with the Regulation.

Moreover, an [EU Observatory of the Online Platform Economy](#) has been created to look into the current and emerging challenges and opportunities for the EU in the online economy.

3. Online Platforms Covered by the Regulation

The Regulation only applies to the contractual relationships between platforms and businesses and excludes commercial practice laws pertaining to general business-to-business relations. The new rules cover 'online intermediation services' and 'online search engines' operating in the EU. Such online platform intermediaries include third-party e-commerce market places (e.g. Amazon Marketplace, eBay etc.), app stores (e.g. Google Play etc.), social media for business (e.g. Facebook pages, Instagram used by makers/artists etc.) and price comparison tools (e.g. Skyscanner etc.). Online search engines that facilitate web searches based on a query on a subject and provide results in various formats corresponding with the search request (e.g. Google Search, Seznam.cz, Yahoo!, DuckDuckGo, Bing etc.) are also covered by the new Regulation.

The Regulation excludes online advertising, payment services, search engine optimisation and services that connect hardware and applications that do not intermediate direct transactions between businesses and consumers, as well as intermediaries that operate between businesses only (e.g. online advertising exchanges). It also excludes online retailers, such as grocery stores (super markets) and retailers of brands (e.g. Nike.com), to the extent that such online retailers directly sell only their own products, without relying on third party sellers and are not involved with facilitating direct transactions between those third party sellers and consumers.

4. State of Play

The P2B Regulation started to apply (i.e. have direct effect in EU member states) from 12 July 2020. In July, the European Commission also published a [set of resources to help traders, online platforms and search engines get the most out of the new rules](#). These include a [Q&A document](#) that can serve as a checklist for online platforms and search engines when implementing the new requirements and a [video](#) to help online platforms and search engines assess whether the new rules apply to them. The EU's executive arm further confirmed that [official guidelines on ranking](#) are also under work.

5. Tourism & Travel Stakeholders' Views

The Regulation received positive feedback from online businesses. Stakeholders agreed that the regulation marks a step towards increased and fair competition in online distribution, which is to be continued with the modernisation of the consumer law.

Eu travel tech, which represents online travel platforms and search sites, expressed its view that the new regulation increases transparency on the terms and conditions binding platforms and business

users. Eu travel tech [called](#) on the Commission to ensure that, in its review of the P2B Regulation, the legislation is delivering a level playing field for all players, including online intermediaries and online search engines. Moreover, the organisation encourages the Commission to further consider more targeted measures that would prevent search engines unfairly showing preference to their own products and services in their results pages.

The European hospitality industry, with representation from [HOTREC](#), said that the regulation was a significant step in the right direction towards increased transparency and fairer terms and conditions for the 200,000 hotels across Europe in their business relationships with internet giants. They also said that the European hospitality industry relies on the Online Platform Observatory, to monitor its implementation and further developments in view of the future revision of the regulation.

When the proposal was published, [BEUC](#), which, inter alia, represents consumers on the European stage, welcomed the initiative. *“Platforms should not hide behind their algorithms when ranking products, services and information on their e-commerce sites or search engines. Companies and consumers have a right to know how they rank for instance hotel offers or search results”*, said Monique Goyens, Director General of The European Consumer Organisation.

6. For further Information

- [European Commission Factsheet](#)
- [European Commission – Q&A](#)
- [European Commission Impact Assessment](#)
- [Business-to-business relations in the online platform environment](#)

ETC Executive Unit
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