

Track Changes

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July 2020

New EU regs on e-commerce likely to bolster transparency and innovation (are the critics wrong?)

Although some observers have criticized the EU's new regulations on e-commerce for being too soft on platforms of online intermediation services and online search engines, the changes will contribute to achieving the digital single market. Critics argue that the new regs do not impose restrictive enough standards on the platforms, which often have a dominant position in the market.

However, the regulations are expected to generate indirect benefits as a result of greater transparency and improvements in innovation and data access policies. Nonetheless, only in practice will we truly know whether these regulations will fulfil their intended purpose.

From 12 July 2020, Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services have direct effect in all Member States of the European Union (the "**Regulation**" or "**P2B Regulation**"). The main purpose of this Regulation is to ensure the transparency of commercial relationships between platforms which offer online intermediation services and online search engines ("**Platforms**") and business users (any private individual acting in a commercial or professional capacity who, or any legal person which, through online intermediation services offers goods or services to consumers for purposes relating to its trade, business, craft or profession).

Who does the Regulation apply to?

The Regulation will apply to Platforms if they meet the following conditions: they provide their services to business and corporate users established in the European Union ("**EU**"), and they offer goods or services to consumers located in the EU. The obligations of outlined here will apply only in B2B relationships.

In Poland for example, the most popular entities in this industry include Allegro, Ceneo and OLX, but the criteria within the Regulation also covers certain applications for smartphones, for example, Google Play and the Apple Store.

What obligations have been imposed on Platforms?

Under the Regulation, Platforms will likely need to change their Terms and Conditions ("**T&Cs**") to cover a number of requirements, including:

- the text of the T&Cs should be in plain and easy-to-understand language, and easily accessible by business users;
- Platforms must notify users of any proposed changes to the T&Cs at least 15 days before such changes are introduced. This deadline may optionally be extended by the Platform, and must be extended when the changes to the T&Cs mean that the users must adapt to new technical or commercial conditions (for example, the implementation of new software);
- in lieu of accepting the changes, the business user must have the option of terminating the agreement with the Platform before the expiry of the notice period, and such termination shall take effect within 15 days from the receipt of the notice, unless a shorter period applies to the agreement;
- where the Platform 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, with a statement of reasons for that decision on a durable medium (meaning any instrument which enables business users to store information addressed personally to them in a way accessible for future reference and for a period of time adequate for the purposes of the information and that allows the unchanged reproduction of the stored information);
- an explanation of the impact that the agreement has on a business user's ownership and control of their IP rights should be included in T&C.

Additionally, an internal complaint-handling system must be easily accessible and free of charge for business users and must ensure handling within a reasonable time frame.

Moreover, organisations and associations that have a legitimate interest in representing business users, as well as public bodies set up in Member States have a self-standing right to take action before national courts and to counter any non-compliance with the Regulation by the Platforms. EU countries in addition provide adequate and effective enforcement mechanisms.

The Regulation also introduces an alternative mediation mechanism to secure an option of facilitating the out-of-court settlement of disputes with business users.

Personal data protection has been strengthened

The Regulation also refers to the protection of business users' personal data. The Regulation specifically anticipates the increasing value of data, specifically that business users should know whether the Platform makes data generated as part of their use of the online intermediation service available to third parties for purposes that are not necessary for the proper functioning of those provided services. T&C should include details as to whether the business user or the Platform has access to the data and under what conditions.

Summary

The Regulation creates new obligations for the Platforms as well as new rights for the business users of such services. The purpose of the Regulation is to protect the interests of entities using search engines for products or services, in order to ensure that the results searched for by these search engines are generated in a transparent manner and in accordance with the rules of fair competition.

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For more detailed information on the upcoming changes in the field of the intellectual property, please contact us.



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