



**A proposed EU
regulation for online
platform-to-business
relationships**

The European Commission has proposed legislation to promote fairness and transparency for users of online intermediation services. At the time of this publication, the European Commission believes it will be adopted and become law; the effective date would be the third quarter of 2019. An EU regulation will have a direct effect on every EU Member State. While the regulation's implementation date may seem far away, assuming it will be adopted, there is much that should be done by impacted entities before the effective date.

Who is the regulation directed at?

The regulation is principally directed at online intermediary service providers, namely online platforms where either (a) the transaction and payment takes place on the platform, typically with the platform charging a commission (e.g., Airbnb), or (b) the platform facilitates a commercial transaction, and while the transaction may not occur via the platform, there is a contractual relationship between the supplier (business user) and the platform (e.g., Facebook). Obviously, the regulation has significant, practical consequences for the users of such platforms.

“Important decisions will need to be taken by an online platform about how it is going to do business. We anticipate it could take at least six months for a platform to reach such decisions. At the same time, business users should be familiar with the proposed changes to the contractual relationship and consider them accordingly, e.g., in the case of upcoming agreement renewals. If the proposed legislation takes effect in Q3 2019, then serious planning should already commence.”

Kiran Desai
EU Competition Law Leader

The following are examples of online intermediary service providers that would be affected by the regulation.¹

eBay	Etsy	Zalando
Fnac MarketPlace	Opodo	Chrono24 Trusted Checkout
Booking.com	Expedia	Hostelworld
TripAdvisor Instant Booking	Skyscanner Direct Booking	Uber
Airbnb	Deliveroo	Microsoft store
UpWorld	Idealo.de	Kindle Direct Publishing
Vimeo	Xbox self-publishing games	Facebook
Google Play	Opera Mobile Store	Samsung Smart TV
LG Smart World	Sony PlayStation	Oculus Gear VR
Alexa Skills		Amazon Marketplace

The regulation addresses certain business practices between an operator and the business user, which the European Commission deems to be unfair. It can be assumed it will have a significant impact on the way the business user and the platform operator will work together. It would apply to online platforms that support vendors who provide products or services to customers located in the EU. This might represent only a subgroup of all users of an online platform, but it will be necessary for an online platform to consider the extent it is willing to have contractual relations with EU business users, compared to non-EU business users.

EY Law supported the EU Commission in its considerations by providing a study which:

- Comprehensively analyzes 102 sets of contractual terms and conditions (T&Cs) governing the relationship between online platforms and their professional users

- Outlines the legal framework of the relationship between platform operators and their business users in 33 countries
- Defines what has to be considered fair in these relationships
- Suggests concrete fairness benchmarks for various legal practices found to be regulated in the T&Cs
- Assesses the economic relevance of the reviewed practices and the business impact the application of the suggested benchmarks would have

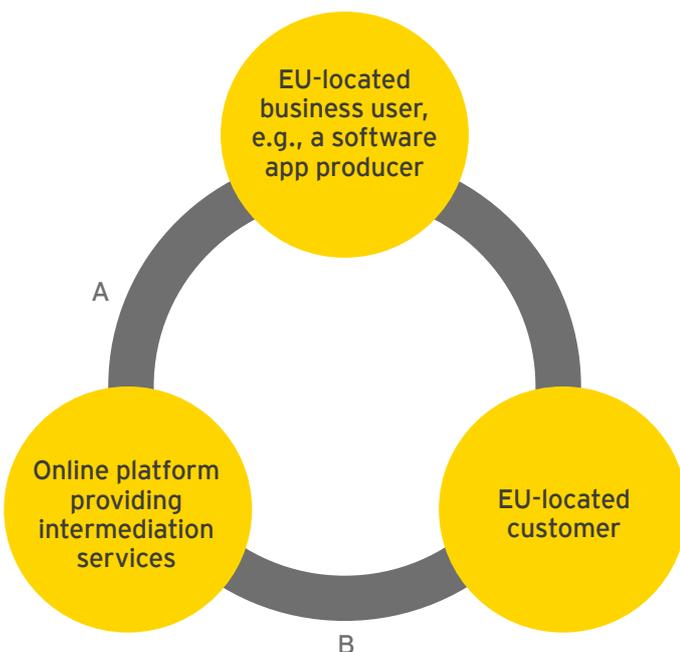
This study can be found at <https://ec.europa.eu/digital-single-market/en/news/study-contractual-relations-between-online-platforms-and-their-professional-users>.

The regulation primarily addresses the relationship between the business user and the online platform (relationship A in the adjacent diagram), although there are aspects touching on the relationship between the online platform and the customer (relationship B).

What online platforms need to do before the effective date

Online platforms will need to review their terms and conditions to ensure they are clear and unambiguous, and make them easily available to business users. Failure to do so means the terms and conditions, or at least specific provisions, would be null and void, creating business-disruption issues for the online platform.

The review of the terms and conditions should also occur before the effective date in order to refresh or update the terms. This is important, because after the effective date, business users must be notified of all changes to the terms and conditions. Business users can complain about any such changes, and ultimately the matter could go to mediation.



¹Source: Commission Staff Working Document, Impact Assessment, SWD(2018) 138 final



What online platforms cannot do

Under the regulation, online platforms cannot suspend or terminate a business user without first providing a statement of reasons. The business user subject to the suspension or termination can complain, and the matter could go to mediation.

What online platforms must do

Under the regulation, online platforms must include in their terms and conditions a description of the main parameters determining ranking, namely the order in which the results are displayed.

“Millions of mostly small traders in the EU now depend on online platforms to reach their customers across the Digital Single Market. These new online marketplaces drive growth and innovation in the EU, but we need a set of clear and basic rules to ensure a sustainable and predictable business environment. Today’s proposal brings more transparency to the online economy, gives businesses the predictability they need, and will ultimately benefit European consumers.”

Andrus Ansip, EU Commissioner
Vice President for the Digital Single Market
26 April 2018

In addition, an online platform might be vertically integrated and so offer goods or services that compete with those of the business users. If so, the terms and conditions must include a description of any preferential conditions (whether legal, commercial or technical) that apply to the online platform and its own goods or services – compared to the goods or services of business users.

Further, online platforms will need to determine and then clearly state their data policy. They must identify what data is collected from business users and customers and inform them whether they have the ability to access this data; if so, they must identify on what terms such data will be provided to business users. In addition, to the extent an online platform is aggregating data, it must inform business users and again identify whether it has taken data; if so, it must identify on what terms such aggregated results will be provided to business users.

Finally, online platforms will need to describe their internal complaint-handling system and include this description in their terms and conditions. Annually, an online platform must publish information on the functioning of its internal complaint-handling system, including information on the number of complaints lodged, the subject matter of the complaints and the time to process the complaints. Anticipating that some complaints will not be resolved, an online platform must identify mediators to whom a complainant can seek redress. Whether or not mediation is pursued, either party remains able to go to court to seek redress.

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EYG no. 010846-18GbI

BMC Agency
GA 1008120

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