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Accompanying the

**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE
COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE
COMMITTEE OF THE REGIONS**

**on the first preliminary review on the implementation of Regulation (EU) 2019/1150 on
promoting fairness and transparency for business users of online intermediation services**

{COM(2023) 525 final}

Table of Contents

1. INTRODUCTION.....	3
1.1. Context	3
1.2. Specific provisions and objectives of the Regulation.....	4
1.3. Scope of the Regulation.....	6
1.4. Scope of the first preliminary review of the Regulation	7
1.5. Methodology.....	8
2. MAIN FINDINGS.....	10
2.1. Baseline and results – transparency and accessibility (Articles 3 to 10).....	10
2.1.1. Article 3 – terms and conditions.....	10
2.1.2. Article 4 – Restriction, suspension and termination.....	12
2.1.3. Article 5 - Ranking	13
2.1.4. Article 6 – Ancillary goods and services.....	14
2.1.5. Article 7 – Differentiated treatment	14
2.1.6. Article 8 – Specific contractual terms	15
2.1.7. Article 9 – Access to data.....	15
2.1.8. Article 10 – Most Favoured Nation clauses	16
2.2. Conclusions – transparency and accessibility (Articles 3 to 10).....	16
2.2.1. Informed businesses	17
2.2.2. Contractual rights	17
2.3. Baseline and results – due process and redress mechanisms (Articles 11 to 15)..	19
2.3.1. Article 11 – internal complaint-handling system	19
2.3.2. Article 12 – Mediation.....	19
2.4. Conclusions – due process and redress mechanisms (Articles 11 to 15).....	20
2.4.1. Complaint handling	20
2.4.2. Mediation.....	22
2.4.3. Need for public enforcement.....	24
2.5. Codes of conduct (Article 17)	28
2.6. Limited awareness	29
3. COMPLEMENTARITY WITH OTHER EU ACTS.....	30
3.1.1. Oversight – spotting potential non-compliance.....	31
3.1.2. Research – automated tracking of terms and conditions.....	31

Glossary

<i>Term or acronym</i>	<i>Meaning or definition</i>
OISs	Online intermediation services
OISPs	Online intermediation service providers
T&C	Terms and conditions
OTA	Online travel agency

1. INTRODUCTION

1.1. Context

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 EU Regulation on [platform-to-business relations \('the P2B Regulation'\)](#)¹ was **the first horizontal regulation for the platform economy**. Until then, platforms were covered by sets of different and piecemeal rules and the harmful practices by these practices were not regulated in their entirety.

The new rules were aimed to create a fair, transparent and predictable business environment for smaller businesses and traders on online platforms when using online intermediation services (OISs) and online search engines (OSEs). As well as granting businesses more predictability in their relationships with platforms, and giving access to effective means to address problems, the P2B Regulation was also meant to encourage businesses' use of online platforms as a means to achieve growth. Clearer rules at EU level were envisaged to provide platforms with a predictable regulatory environment and enable them to scale up in a less fragmented single market.

The impact assessment preceding adoption of the P2B Regulation² confirmed that online intermediation services can be crucial for the commercial success of business users, who use such services to reach consumers. Online search engines are also key to the commercial success of all businesses that operate websites. However, as these become increasingly important and relied upon by many businesses for market access, they can behave in a way that can cause significant economic harm to business users. The problematic trading practices ('P2B practices') addressed by the P2B Regulation can be harmful as they limit (national and cross-border) sales and innovation, ultimately to the detriment of consumers.

These rules have now been directly applicable in all Member States for almost 3 years – since 12 July 2020.

In the meantime, other pieces of EU legislation that complement or reinforce the provisions of the P2B Regulation have been adopted. These include the [Digital Markets Act](#)³ and [the Digital Services Act](#)⁴ or the [proposed directive on improving working conditions in platform work](#)⁵.

¹ 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 PE/56/2019/REV/1, OJ L 186, 11.7.2019, p. 57–79.

² Impact assessment of the Proposal for a Regulation of the European Parliament and of the Council on promoting fairness and transparency for business users of online intermediation services | Shaping Europe's digital future, SWD(2018) 138 final.

³ Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act) (Text with EEA relevance) PE/17/2022/REV/1 OJ L 265, 12.10.2022, p. 1–66.

1.2. Specific provisions and objectives of the Regulation

The P2B Regulation regulates two aspects of the relationship between business users and online intermediary service providers (OISPs). The first set of rules relates to transparency and accessibility, while the second focuses on dispute resolution methods. Hence, the Regulation has a two-fold aim: increasing business users' access to clear and transparent information and providing them with means to protect their rights. The third part of the P2B Regulation concerns measures to enforce these new rules.

The P2B Regulation takes a contract-based approach and requires OISPs and search engines to provide transparency in their terms and conditions (T&Cs) about various aspects that directly affect their relationship with business users and corporate website users.

Article 3 requires OISPs to provide information in their T&Cs on the grounds for suspension and termination, on any additional distribution channels and affiliate programmes, on the ownership and control of intellectual property rights of business users, and to notify business users of any T&C changes with a 15-day notice on a durable medium.

In addition, Articles 4 to 10 of the Regulation require that OISPs provide a statement of reasons for termination to business users with at least 30 days' notice (Art. 4); and set out in their T&Cs: (i) the parameters used for ranking (Art. 5); (ii) information on ancillary goods and services provided (Art. 6); (iii) information on the use of differentiated treatment (Art. 7); (iv) information on business users' access to data (Art. 9); (v) information on the restrictions to offer different conditions through other means (Art. 10); and (vi) further specific contractual terms (Art. 8).

Ranking transparency takes a very central role in the P2B Regulation, this helps understand some of the crucial benefits that business users have from transparent and detailed terms and conditions. These include the ability to compare different providers' terms and conditions, and to understand how to balance service/product investment with investments in paid ranking.

According to **Recital 24** of the P2B Regulation: 'Predictability entails that providers of online intermediation services determine ranking in a non-arbitrary manner. Providers should therefore outline the main parameters determining ranking beforehand, in order to improve predictability for business users, to allow them to better understand the functioning of the ranking mechanism and to enable them to compare the ranking practices of various providers.'

This mention of 'non-arbitrary' ranking refers to the wider need for the private-law terms and conditions of online intermediation services to respect the fundamental rights of business users, including their right to impart information. The **Digital Services Act**

⁴ Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and amending Directive 2000/31/EC (Digital Services Act) (Text with EEA relevance) PE/30/2022/REV/1 OJ L 277, 27.10.2022, p. 1–102.

⁵ Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on improving working conditions in platform work, COM/2021/762 final.

makes this interplay between fundamental rights and intermediary services' terms and conditions explicit in its **Article 14(4)**: 'Providers of intermediary services shall act in a diligent, objective and proportionate manner in applying and enforcing the restrictions referred to in paragraph 1, with due regard to the rights and legitimate interests of all parties involved, including the fundamental rights of the recipients of the service, such as the freedom of expression, freedom and pluralism of the media, and other fundamental rights and freedoms as enshrined in the Charter.'

The second set of rules (Articles 11–14 of the P2B Regulation) focuses on dispute resolution methods. It obliges online intermediation services – except platforms that are small enterprises – to put in place an easily accessible and free-of-charge internal system to handle business users' complaints. The system should allow business users to lodge complaints regarding platform non-compliance with the P2B Regulation, technological issues, or platform measures related to online intermediation services that directly affect the complainant. Platforms are obliged to duly consider all the complaints, process them swiftly and effectively, and provide easy-to-understand information on the outcomes of this process to the complaining business users (Article 11(2)). The access to, and functioning of, the complaint-handling system itself should be presented in detail in the platform T&Cs (Article 11(3)). At the same time, up-to-date information on the functioning and effectiveness of the internal complaint-handling system (i.e. number of complaints logged, types of complaints, time needed to process them and outcomes) should be available publicly (Article 11(4)).

Under Article 12, OISPs should identify in their T&Cs two or more mediators with whom they are willing to engage to reach an agreement with business users on the out-of-court settlement of disputes over the provision of the online intermediation services concerned. The mediators identified by the platform should: (i) be impartial and independent; (ii) provide affordable services for business users; (iii) be able to provide their services in the language of the terms and conditions that govern the contractual relationship; (iv) be easily accessible and able to provide their services without undue delay; and (v) have a sufficient understanding of general business-to-business commercial relations.

Additionally, in line with Article 12(4), OISPs should bear a reasonable proportion of the total costs of mediation in each individual case. This reasonable proportion should be based on the suggestion of the mediator while taking into consideration other elements such as the size and financial strength of the parties relative to one another. At the same time, the parties concerned are not prevented from initiating judicial proceedings any time before, during or after the mediation process. OISPs defined as small enterprises as per the Annex to Recommendation 2003/361/EC⁶ are not subject to this requirement, and thus do not need to identify at least two mediators in their T&Cs.

The Regulation also encourages, in Article 13, setting up of specialised mediators. Under this provision, the Commission should closely cooperate with Member States to encourage OISPs and associations representing them to individually or jointly set up one

⁶ European Commission (2003). Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (notified under document number C(2003) 1422), 2003/361/EC. Available at:

<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=ECELEX:32003H0361&from=EN>.

or more organisations providing mediation services which meet the requirements in Article 12(2) of the P2B Regulation. Specialised mediators' specialist knowledge is meant to give both parties more confidence in the mediation process and in the likelihood of a satisfactory outcome⁷.

At the same time, the P2B tries to make it easier for business users to opt for recourse to judicial proceedings if they chose to do so. Article 14 of the P2B Regulation establishes the possibility for organisations with an interest in representing business users to bring actions before competent national courts in the EU to stop or prohibit non-compliance by online platforms with the P2B Regulation. The article grants this right to organisations and associations, as well as to public bodies that have a legitimate interest in representing businesses that use online platforms. To bring an action before competent national courts, such organisations must be designated by the Member State in which they reside. This right afforded to designated organisations does not affect the rights of businesses that use online platforms to act before competent national courts on their own behalf.

The third element of the P2B Regulation focuses **on enforcement**. Pursuant to Article 15(1) of the P2B Regulation, Member States are required to ensure its adequate and effective enforcement. Article 15(2) requires Member States to lay down rules that set out the measures applicable to infringements of the Regulation and ensure they are implemented. That provision further requires that the measures be effective, proportionate and dissuasive. These provisions also require Member States to lay down **specific** national implementing measures to address infringements of the P2B Regulation. Member States may not rely on **existing** general procedural rules in national administrative or civil law without duly amending these by clearly specifying their relevance for enforcement of the P2B Regulation.

1.3. Scope of the Regulation

The P2B Regulation applies to providers of online intermediation services and online search engines insofar as they provide their services to business users to enable them to reach consumers in the EU.

Under the P2B Regulation, a provider of online intermediation services is defined as a natural or legal person that provides, or offers to provide, 'online intermediation services' which qualify as such when they meet the following criteria: (i) they constitute information society services within the meaning of point (b) of Article 1(1) of Directive (EU) 2015/1535¹⁵; (ii) they allow 'business users' to offer goods or services to 'consumers'; (iii) with a view to facilitating the initiating of 'direct transactions' between the business users and the consumers, regardless of where the direct transactions are ultimately concluded; and (iv) they are provided to 'business users' on the basis of contractual relationships between the provider of the services and the business users.

Examples of online intermediation services covered by the P2B Regulation include online e-commerce marketplaces (including collaborative sites on which business users are active), online software applications services such as application stores, and online social media services. It is not relevant whether the transactions between business users

⁷ European Commission (n.d.) Questions and Answers Establishing a Fair, Trusted and Innovation Driven Ecosystem in the Online Platform Economy.
Available at: https://ec.europa.eu/newsroom/dae/document.cfm?doc_id=68300.

and consumers that these services intermediate involve any monetary payment or whether they are concluded in part offline. However, the Regulation does not apply to: (i) peer-to-peer online intermediation services without the presence of business users; (ii) pure business-to-business online intermediation services which are not offered to consumers; (iii) 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 consumers⁸. For the same reason, search engine optimisation software services and services which revolve around advertising-blocking software are not covered by the Regulation. Not does it 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.

In addition, some rules for online intermediation services do not apply to small enterprises⁹ (i.e. rules on setting up internal complaint-handling systems and indicating two mediators in the terms and conditions).

1.4. Scope of the first preliminary review of the Regulation

Many of the priority items for evaluation included in the P2B Regulation's review clause (Article 18) have, following the entry into force of the P2B Regulation, been taken up in separate instruments, notably the Digital Markets Act (DMA), the Digital Services Act (DSA) and the proposed directive on improving working conditions in platform work. Specifically, Article 18(c), (d), (e) and (f) respectively concern: (i) unfair commercial practices resulting from the dependence of business users on online intermediation services; (ii) unfair competition by integrated providers of online intermediation services; (iii) imbalances affecting business users of operating systems; and (iv) possible effects of the 'business user' definition on 'bogus self-employment'. Concerning Article 18(b), the assessment was not possible since no codes of conducts have been established, to this end a follow-up action is provided in this report.

All of the above priority items have been taken up in acts other than the P2B Regulation and therefore were not part of this preliminary assessment. Once the proposed Platform Work Directive will be adopted by the European Parliament and the Council, there should no longer be a gap in protection of persons working through digital platforms as regards transparency of algorithms and complaint-handling, regardless of whether those people are 'business users', platform workers or (genuine) self-employed persons performing platform work, as the relevant individuals will benefit from the protections of either the P2B Regulation or the Platform Work Directive. The P2B Regulation remains relevant to all of the priority items mentioned above, through the existing transparency and redress provisions. At the same time, other acts of EU law complement the P2B Regulation to take up the priority items mentioned above, which could have necessitated a full evaluation of the P2B Regulation. For example, the Digital Markets Act applies to online intermediation services as well as to operating systems, and it precisely addresses

⁸ Article 2(2) of the P2B Regulation.

⁹ As defined in Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (notified under document number C(2003) 1422). 2003/361/EC. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=ECELEX:32003H0361&from=EN>.

the issues of unfair commercial practices, unfair competition and other negative effects of imbalanced bargaining positions between business users and core platform services.

Therefore, and because of certain Covid related delays in implementing the necessary enforcement structures by the national governments and parliaments under Article 15 of the P2B Regulation, and the relatively short period of its applicability, this document therefore presents a **preliminary implementation report**, instead of a full review of the P2B Regulation.

This preliminary implementation report takes the form of both a factual report detailing the degree of implementation and effects of the P2B Regulation.

The report is based on the findings and analysis performed by the Commission departments, informed by an external study¹⁰. The Expert Group for the Observatory on the Online Platform Economy issued its own opinion on the first evaluation of the P2B Regulation¹¹, which is also taken into account in the preliminary report. The contractor’s final report reviewed the state of play of the P2B Regulation’s implementation and the effects of its application since it started to apply on 20 July 2020. The report built on an extensive data collection and consultation exercise and analysis, including over 300 interviews with various types of stakeholders, four international focus groups, a business user survey in eight Member States, a review of the terms and conditions of a selection of 300 online intermediation services, and extensive desk research and a literature review.

1.5. Methodology

This report is based on the methodology used by the external study¹². It focused on the effectiveness of the P2B Regulation in the two years since it has been applicable (since July 2020). To achieve this, the study team used a variety of tools, such as the interview programme, focus groups with platforms’ business users, review of the platform Terms and Conditions, business user survey, as well as the in-house COM work following the implementation of the P2B Regulation in the EU Member States.

The research questions and analytical framework used by the study team were operationalised considering the types of platforms and sectors covered by the P2B Regulation, as well as the main objectives of the overall Regulation and its provisions.

Categorisation of sectors of the online platform economy used in the study.¹³

Type of platforms	Business users
Online e-commerce marketplaces (e.g., Amazon, eBay, Allegro, Bol.com, etc.)	Businesses offering consumer goods, including specialty goods (e.g., paintings).

¹⁰ Study on Evaluation of the Regulation (EU) 2019/1150 on promoting fairness and transparency for business users of online intermediation services (the P2B Regulation), ISBN 978-92-68-06114-5.

¹¹ Opinion of the Expert Group for the EU Observatory on the Online Platform Economy for the Evaluation of the P2B Regulation (to be published on its website)..

¹² Study on Evaluation of the Regulation (EU) 2019/1150 on promoting fairness and transparency for business users of online intermediation services (the P2B Regulation), ISBN 978-92-68-06114-5

¹³ Study on Evaluation of the Regulation (EU) 2019/1150 on promoting fairness and transparency for business users of online intermediation services (the P2B Regulation), ISBN 978-92-68-06114-5.

Online travel agencies (e.g., Booking.com, Hotels.com, TripAdvisor, etc.)	Hotels, short-term rent providers, travel agencies and tour organisers, airlines, car rent companies, restaurants.
Online application stores (e.g., Apple App Store, Google Play Store, Samsung Galaxy Apps, etc.)	App developers.
Specialised services platforms (e.g., Treatwell, Groupon, Uber, Deliveroo, etc.)	Companies and individual entrepreneurs operating in all sectors not mentioned above, offering services to consumers. This category also covers delivery, ride-hailing and domestic services.
Online search engines (e.g., Google, Bing, Yahoo, etc.)	Companies operating in all sectors that provide goods and/ or services to consumers.
Social media platforms used for business purposes (e.g., Twitter, Facebook, Instagram, YouTube, WhatsApp, Google My Business, etc.)	Companies operating in all sectors that provide goods and/ or services to consumers.

At the output level, the study examined the extent to which the specific articles of the Regulation were implemented. Depending on the article, the implementation concerned changes in either the platform Terms and Conditions, platform websites, or actions implemented by enforcement authorities. Where relevant, the factual information was accompanied by the comments by platforms or experts. This analysis relied on an extensive review of platform websites and documents, interviews and literature review.

At the result level, the research team investigated the effects that the actions implemented by platforms and authorities had on the platform business users and corporate website users: whether they feel better informed about platform policies and practices, have better access to complaint handling mechanisms or are notified about changes in platform policies or practices. This part of the analysis relied on the review of internet sources, literature review, business user survey, interviews, focus groups, and case studies.

The impacts and added value analysis then looked into the broader implications that the P2B Regulation had on the European platform economy. It relied on the synthesis of outputs and results analysis, as well as additional insights from interviews, focus groups and literature review.

The assessment of the efficiency of the P2B Regulation relied mostly on the interview data. The study team run altogether 308 interviews, including all types of stakeholders: platforms, business or corporate business users, business associations, national enforcement authorities as well as experts, mediators, and others. The interviews were run both at national level in 27 Member States, by national experts and also at EU level. Given the diversity and large numbers of platform business users, the interview programme primarily targeted those who had experienced some kinds of issues with the platforms that they use. Platforms were primarily targeted based on the list of platforms selected for the T&C review (a sample of 300 platforms). Both large and small platforms were covered in the interview programme.

In addition, the study team conducted a manual review of the T&Cs of the 300 platforms and developed a solution for future automated review. The selection of platforms was agreed with the Commission services and meant to ensure the representativeness in terms of size and type of platforms.

Classification of reviewed platforms in terms of size, type and industrial ecosystem¹⁴

Size			Type								Industrial Ecosystem								
Large	Medium	Small	E-commerce marketplace	OTA	Ride Hailing	Domestic services	Delivery	Online app stores	Online social media	Online search engines	Agri-food	Construction	Creative & Cultural	Digital	Retail	Health	Mobility, Transport, Automotive	Proximity & Social Economy	Tourism
121	68	111	159	28	18	23	32	13	17	10	33	21	12	42	85	2	40	33	32

The study team also run a survey of business users of platforms to gather their perceptions on the transparency and fairness of T&C and the effectiveness of the internal complaint handling systems. The sample consisted of 1068 valid responses from business users from 8 EU Member States of different sizes, where around two thirds of the sample was composed of smaller businesses users.¹⁵ In addition, the contractor relied also on 14 case studies illustrating the implementation of the P2B Regulation by platforms and four focus groups that grouped the business and corporate users in the following sectors: social media, SEO specialists, hospitality and app developers.¹⁶

The work by the study team, in particular as regards the provisions on the enforcement of the P2B Regulation by the Member states was complemented by the Commission services work on ensuring the proper implementation by the Member States of the provisions on enforcement (Art. 14 and 15 P2B).

2. MAIN FINDINGS

2.1. Baseline and results – transparency and accessibility (Articles 3 to 10)

2.1.1. Article 3 – terms and conditions

Significant numbers of business users have structurally reported that they find the terms and conditions used by online intermediation services unclear. Notwithstanding the widespread fear of retaliation among business users that the Commission documented in the preparatory work for the P2B Regulation, surveys conducted in 2014, 2016, and 2017 showed that more than 30% of users, including ‘heavy users’, disagreed that terms and conditions were generally clear. A 2020 assessment of the contracts of online intermediation services providers showed that more than half did not even have terms and conditions that are specific for business users.

¹⁴ Study on Evaluation of the Regulation (EU) 2019/1150 on promoting fairness and transparency for business users of online intermediation services (the P2B Regulation), ISBN 978-92-68-06114-5.

¹⁵ Study on Evaluation of the Regulation (EU) 2019/1150 on promoting fairness and transparency for business users of online intermediation services (the P2B Regulation), ISBN 978-92-68-06114-5; p. 20.

¹⁶ Study on Evaluation of the Regulation (EU) 2019/1150 on promoting fairness and transparency for business users of online intermediation services (the P2B Regulation), ISBN 978-92-68-06114-5; p. 22-23.

For the interpretation of all of these results, where sometimes a seemingly important proportion of business users is relatively positive about their dealings with online intermediation services, it is important to consider that the terms and conditions cannot be negotiated by business users and that elements such as the clarity of these contracts matters especially when issues arise in practice. This finding was confirmed in interviews conducted with business users as part of this preliminary implementation report, i.e. that business users rarely read the terms and conditions thoroughly.

Notwithstanding, it is noted in the impact assessment underpinning the P2B Regulation that terms and conditions of online intermediation services are generally perceived as unclear – even for legal experts.¹⁷ Equally, the present preliminary implementation report finds that all terms and conditions under analysis require at least 16 years of education in order to understand them.

The preliminary implementation analysis shows a limited positive trend regarding the clarity of terms and conditions, relative to the baseline, with only 13% disagreeing that terms and conditions are plain and intelligible. Interviews with business users however show equal numbers stating that the level of transparency and clarity regarding what is mandated by the P2B Regulation as, on the one hand, sufficient, and, on the other hand, low.¹⁸ Business users also point out the general complexity of terms and conditions, and the use of legal jargon. These qualitative insights support the notion that regulators should look both at the required contractual transparency as well as at the experience of business users in practice. The P2B Regulation in this regard also requires online intermediation services to report on the effectiveness of their internal complaint-handling mechanism, pursuant to Article 11. This is an important provision to give more insights into the level of friction in P2B relationships – although many business users may still fear retaliation, or biased proceedings, and therefore shy away from using this platform-internal system. This is discussed in more detail in section 2.3.1.

Beyond the general clarity of terms and conditions, Article 3 of the P2B Regulation requires these to be easily available at all stages of the contractual relationship, including the pre-contractual stage, in order for prospective business users to be able to make an informed decision. The preliminary implementation assessment found a slightly higher percentage of online intermediation services having terms and conditions that are specific to business users – and therefore potentially compliant with the P2B Regulation. A significant number of online intermediation services however does not make their terms and conditions available without the need to register or log-in, which could be problematic given the need to make these easily accessible including in the pre-contractual stage. The limited improvement for isolated online intermediation services that was observed in this regard does not alter that finding. Half of the larger online

¹⁷ Commission Staff Working Document (2018) 138 final, of 26 April 2018, p. 11.

¹⁸ Study on Evaluation of the Regulation (EU) 2019/1150 on promoting fairness and transparency for business users of online intermediation services (the P2B Regulation), ISBN 978-92-68-06114-5.

intermediation services in addition spread the relevant contractual provisions over several documents.

Importantly, a large number of online intermediation services does not set out the grounds for suspension or termination of accounts, and half of those that do, do not give detailed grounds.¹⁹ With suspension and termination remaining the key issue experienced by business users in terms of business impact, the ability to understand the grounds for these platform actions is an essential pre-condition to a functioning dispute settlement system. This finding should therefore be read together with those concerning Article 11 of the P2B Regulation.

Finally, regarding the mandatory notice period that online intermediation services should offer business users for changes to their terms and conditions, only around half of all online intermediation services indicate that they offer a 15-day notice period, as mandated by the P2B Regulation.²⁰ Importantly, the P2B Regulation sets the 15-day period as a minimum and requires longer notice period for technical or commercial adaptations that may be required by business users. The preliminary analysis could not confirm whether notice period were respected in practice. At the same time, the automated tracking of terms and conditions through the newly established online repository showed 10 online intermediation services making changes to their terms and conditions that were relevant from the perspective of the P2B Regulation.

Overall, there appears to be a lack of clarity of terms and conditions that remains prevalent in the online platform ecosystem. The negative effects for business users of this lack of clarity could be compounded by specific potential breaches of other elements of Article 3 of the P2B Regulation. Importantly, Article 3 of the P2B Regulation operates in concert with Article 11 of the P2B Regulation, as well as with all other Articles of the Regulation, and it appears that online intermediation services generally fail to comply fully, and comprehensively, with - the purpose of - Article 3 of the P2B Regulation. Some initial positive effects of the Regulation were nonetheless observed.

2.1.2. Article 4 – Restriction, suspension and termination

The results of this first preliminary analysis point to an improvement of the situation relative to that prevailing prior to the introduction of the P2B Regulation. A 2020 assessment of a subset of online intermediation services showed that they all list the reasons for restrictions, suspension and termination in their terms and conditions – although sometimes only in very general terms. App developers and business associations report positive changes directly linked to the P2B Regulation.²¹

¹⁹ Study on Evaluation of the Regulation (EU) 2019/1150 on promoting fairness and transparency for business users of online intermediation services (the P2B Regulation), ISBN 978-92-68-06114-5.

²⁰ Study on Evaluation of the Regulation (EU) 2019/1150 on promoting fairness and transparency for business users of online intermediation services (the P2B Regulation), ISBN 978-92-68-06114-5.

²¹ Study on Evaluation of the Regulation (EU) 2019/1150 on promoting fairness and transparency for business users of online intermediation services (the P2B Regulation), ISBN 978-92-68-06114-5.

At the same time, 15% of the 2022 survey sample of business users whose accounts had been suspended, restricted or delisted mentioned that they did not receive any explanation. Immediate terminations continue to be reported, as well as issues experienced by business users in particular regarding a lack of clarity of statements of reasons for restrictions, suspensions and termination, regarding a lack of clarity of the reasons for such actions set out in terms and conditions and regarding a lack of guidance on those reasons. The suspension and termination of accounts continues to be a common topic of business users' complaints, and is reported as the key issue for those business users that experience it (4.4% of respondents to the 2022 survey). A specific concern in this regard is the general vagueness of the contractual terms, including regarding restrictions, suspensions and terminations, which may allow certain online intermediation services to, to some extent, 'ignore' the required notice period under the P2B Regulation – sometimes relying on the exception included in Article 4(3) of the P2B Regulation.

2.1.3. Article 5 - Ranking

Only around a third of all online intermediation services and online platforms under review in the P2B evaluation study listed information on their ranking parameters in their terms and conditions. To the extent they did, this transparency made it possible to draw up an automated word cloud of the most frequently used notions in ranking.



This example does not reflect the potential of the substantive transparency that online platforms have to provide, but rather that platforms' published terms and conditions can be automatically indexed and tracked over time. In this way, business users, as well as other stakeholders including researchers, regulators and broader civil society, can observe and record changes, perform research, conduct inquiries and much more.

In this context, the Commission’s Joint Research Centre will host and maintain a public and open-source repository of the terms and conditions for business users of [over 300] online platforms indexed to date. Automated tracking is one of various ways in which transparency facilitates the agency business users and Europeans have over how they engage with information online.

For ranking specifically, the word cloud example itself shows that many of the most frequently used notions, including ‘popularity’ and ‘relevance’, are highly generic and could describe the overall ranking system, rather than individual parameters used within (different) ranking algorithms that together make up the ranking system. The evaluation study in this regard showed that online platforms diverge widely in terms of the additional information they provide to help business users understand these generic notions.

The evaluation study concludes that ‘the current ecosystems of platforms, their business users, and providers of OSE services have developed and adapted to operating under conditions of opaqueness with regard to ranking algorithms’. This may clarify the wide divergence among business users’ perceptions of whether they have clarity on ranking parameters: 10% of businesses users surveyed for this report mention receiving little or no information on ranking parameters, and an additional 42% mention having a moderate level of information.

2.1.4. Article 6 – Ancillary goods and services

Online intermediation services generally provide few details regarding ancillary goods and services that are offered to consumers through their platforms, and this situation remains unchanged relative to the baseline. An important finding in this respect is that different online intermediation services as well as business users appear to use or have different understandings of what are such ancillary goods and services. This cannot, however, be a reason not to be transparent in this regard; Article 6 of the P2B Regulation is precisely meant to shed light on the business implications for business users dealing on specific online intermediation services – with goods and services offered as ancillary to business users’ own goods or services are part of the experience of business users’ customers. A detailed description of the meaning of ancillary goods and services is also included in the Regulation. The preliminary analysis also shows that a limited number (9%) is able to provide some level of transparency on ancillary goods or services – without prejudice to the question of whether this transparency is sufficient.²²

2.1.5. Article 7 – Differentiated treatment

As explained in section 1, the P2B regulation focuses on the transparency of online platforms that engage in a differentiated treatment between their products and services compared to those of their business users. Before the entry into force of the regulation,

²² Study on Evaluation of the Regulation (EU) 2019/1150 on promoting fairness and transparency for business users of online intermediation services (the P2B Regulation), ISBN 978-92-68-06114-5.

favouring of own products or services by online platforms was identified as one of the three most commonly experienced problematic practices by surveyed business users²³.

In the context of this preliminary review, the T&C of 300 platforms were reviewed and only 6 of them stated the existence of differentiated treatment between business users, including their own goods and services. As for the remaining 294 platforms, the absence of mention to any differentiated treatment cannot be used to conclude with certitude that these platforms do comply or not with the transparency obligation. Nonetheless, some elements can indicate that the compliance is likely low when considering that even large platforms alleged to engage in this behaviour or having been fined for it²⁴, did not mention any differentiated treatment in their T&C. Moreover, the data gathered for this preliminary review show that, even for the 6 platforms that mention a differentiated treatment in their T&C, only 3 fully complied with the Regulation by detailing the main economic, commercial or legal considerations for engaging in this practice²⁵.

2.1.6. Article 8 – Specific contractual terms

The data gathered for this preliminary review show that 56.9% of the 300 T&C reviewed include provisions on how business users can terminate their account. With an important difference existing between large platforms (74.3%) and small platforms (40.5%). Yet, the data also show that the inclusion of such provision in the T&C differs particularly by sectors. In the digital industry 84.3% of the platforms provide for such provisions in their T&C, while a lower presence exists in the transport, retail and tourism sectors with 40% and 50% providing for this provision.

2.1.7. Article 9 – Access to data

The preliminary review of the data gathered showed that 61% of the platforms provide information related to the processing and access to data in their T&C²⁶, with most of the time the information provided in general terms. At the same time, the data show that the level of compliance with Article 9 is relatively similar be it large platforms (69.9%) or smaller one (55.9%). However, some differences exist between sectors, for instance while around 69% of e-commerce platforms and app stores provide the information related to access to data, only 46% of OTAs provide for such information in their T&C.

The different interviews conducted showed a relative medium level of awareness among interviewees, with 56% agreeing that they are aware of how platforms collect and use

²³ Synopsis Report on the Public Consultation on the Regulatory Environment for Platforms, Online Intermediaries and the Collaborative Economy.

²⁴ See for example: The Italian Competition Authority's Decision in the Amazon Logistics Case: Self-preferencing and Beyond. Competition Policy International. Available at: <https://www.competitionpolicyinternational.com/the-italian-competition-authoritys-decision-in-the-amazon-logistics-case-self-preferencing-and-beyond/>

²⁵ See the Study on the implantation of the P2B Regulation, from page 73.

²⁶ See the Study on the implementation of the P2B Regulation, page 85.

their company data²⁷. However, in some sector (hospitality) a common concern among business users is the insufficient access to the client-related statistics and customer data, and unclarity on how this information can be used.

2.1.8. Article 10 – Most Favoured Nation clauses

Prior to the adoption of the P2B Regulation, the information on the MFN clauses were mainly available due to the antitrust investigations conducted against certain platforms of the e-commerce and hospitality²⁸.

The preliminary review and the data gathered show that out of 290 T&C reviewed, 11 contained information about MFN clauses. Yet, as for the remaining 279 of platforms no such information was included in their T&C. However, this data does not allow to establish whether the platforms are in compliance or not, in fact, it is possible that such provisions are negotiated in bilateral contracts with business users. Following interviews of business users in 2022, 17% of the business users interviewed faced restrictions to offer different prices on their own websites relative to the prices offered through platforms (most of whom used OTAs or collaborative platforms)²⁹.

2.2. Conclusions – transparency and accessibility (Articles 3 to 10)

Transparency as prescribed by the P2B Regulation needs to be implemented in the private-law contracts of online intermediation services and therefore translates directly into contractual rights for business users. Transparency is a crucial element to tackle the asymmetric relationship between online platforms and the business users. For one thing, it enables business users to better know their rights, contractual obligations and other elements essential to conduct business in a stable manner. At the same time, it creates conditions for small businesses to grow by having easy access to the entire EU market and ensure innovation by providing new services and products.

For instance, as the P2B Regulation spells out the key commercial issues of ranking, differentiated treatment, access to data and various others, it offers business users clarity on their contractual rights related to these topics. This is in contrast to the lack of any rights that they frequently faced before the Regulation began to apply. In addition, the Regulation provides concrete procedural rights that are also key to dispute settlement, such as the right to obtain prior notice of contractual changes or of any restriction, suspension or delisting of products, services or accounts. These are explained in Section 2.2.

The preliminary evaluation identified several examples that confirmed this important potential that transparency provides. However, this potential remains unrealised due to a widespread lack of awareness among all stakeholders of the rights and obligations in the

²⁷ Business user survey for EU Observatory of Platform Economy, Q061-Q46 ('To which extent do you agree with the following statements? I am aware of how the online platform(s) that we use collect and use our company data')

²⁸ See Study on the implementation of the P2B Regulation, pages 91-92.

²⁹ Study to support the EU Platform Observatory the platform observatory 2022.

P2B Regulation and supplemented by a low level of pro-active enforcement from national authorities.

These examples will be discussed in each of the sub-headings below, while Chapter 2.3 discusses the lack of awareness and the need for public enforcement to achieve the potential of transparency and of the P2B Regulation more broadly.

2.2.1. Informed businesses

As observed in the evaluation study, transparency on ranking offers significant potential, namely ‘introducing more predictability for business users on what influences their position in the presentation of offerings on platforms, so that they could improve the presentation of their goods and services’.

If properly implemented, in line with the objective of ranking transparency as set out in Article 5(5), business users will gain an understanding of how far the quality of their product and services determine their ranking. This will allow them to optimise service and product quality and online presence, the latter including, for example, website design and the design of their presence in online intermediation services. And optimising the online presence of business users can include their advertising strategies.

The findings in the previous sections regarding a prevailing lack of transparency could mean that even where transparency is provided today, it falls short of the P2B Regulation’s requirements. In this regard, the ranking guidelines mention that: ‘the description to be provided has to go beyond a simple enumeration of the main parameters, and provide at least a ‘second layer’ of explanatory information’ and that ‘the description required may be general, but that it should give users an adequate understanding and, moreover, should at least be based on *‘actual data on the relevance of the ranking parameters used’*. This underlines the importance of meaningful transparency as a precondition for compliance with the P2B Regulation, and an ability to achieve its potential.

2.2.2. Contractual rights

Ranking transparency, as described in the previous section, is one example of a range of transparency obligations that translate into direct contractual rights and tangible benefits for EU businesses trading online, whether large or small. Another example is the obligation in Article 7 of the Regulation. That article requires online intermediation services to describe any differentiated treatment they may apply in relation to goods or services they offer themselves as opposed to those of third-party business users. Such transparency can help enforcement authorities in particular to identify and investigate unfair behaviour and to perform in-depth testing of any justifications claimed for such differentiated treatment. Article 6(5) of the Digital Markets Act in this regard already bans more favourable treatment in ranking and related indexing and crawling, and the P2B Regulation provides additional transparency around differentiated treatment in data access, in pricing and in access terms for ancillary services.

The broader concept of mandatory transparency as contractual rights can perhaps be best understood when looking at the P2B Regulation as a whole. Article 3 on terms and conditions, Article 4 on statements of reasons for suspensions and restrictions, Article 5 on ranking, Article 6 on ancillary goods and services, Article 7 on differentiated treatment, Article 8 on specific contractual terms, Article 9 on access to data, Article 10

on restrictions to offer different conditions through other means and Article 11 on the functioning of internal complaint-handling mechanisms all require the relevant information to be included in the terms and conditions of online intermediation services. This has the effect of actually ‘fleshing out’ the contracts that tend to be unilaterally imposed by providers of online intermediation services and that govern platform-to-business relations.

These substantiated terms and conditions also have to be made available at all stages of the commercial relationship between business users and providers of online intermediation services, including in the pre-contractual stage. This specific requirement of Article 3(1)(b) should then facilitate business users’ effective choices.

This potential of the P2B Regulation is of course largely dependent on compliance by providers of online intermediation services, both in adapting their terms and conditions and in acting in accordance with those terms and conditions in practice. In the sections dealing with enforcement, the importance of public authorities playing their part in enabling this potential is discussed in detail.

The study underpinning this report and staff working document contains important findings in relation to contractual transparency, as set out below.

The transparency practice of platforms has somewhat increased since the P2B Regulation became applicable, but this has not yet reached a sufficient level. Alignment with the transparency requirements is disparate and only partially with the different provisions of the P2B Regulation, where the level of information provided is not sufficient. The study shows noticeable improvements, also confirmed by business users, in particular SMEs, on transparency ranking (Article 5) in the hospitality sector. Here, a large proportion of online travel agencies (OTAs) explain their ranking parameters and in more detail than other online intermediation services from other sectors (e.g. e-commerce).

By contrast, on the issue of compliance with Article 3³⁰, the study shows that 100 out of 290 online intermediation services under review did not have, or did not make available, terms and conditions that are specific to business users. For those online intermediation services that did have such terms and conditions, compliance with several of the specific transparency provisions in the P2B Regulation remains lacking.

Nonetheless, even for those online intermediation services that set out these grounds in their terms and conditions, 143 of them did not provide *detailed* grounds. This is particularly the case in the hospitality and e-commerce sector, where business users (mainly micro and small enterprises) continue to face issues due to unclear and generic grounds for suspension or termination. The study showed that the vaguely formulated grounds (e.g. breach of T&Cs) lead to ‘loopholes’ with regard to the notice period.

With online intermediation services currently not sufficiently implementing the Regulation’s transparency rules, these rules have not yet translated into significant

³⁰ Article 3 of the P2B Regulation requires that providers of online intermediations services ensure that: (i) their terms and conditions are drafted in plain and intelligible language; (ii) are easily available to business users at all stages of the commercial relationship; (iii) set out the grounds for the decision to suspend, terminate or impose any other restrictions; (iv) include information on additional distribution channels; and (v) provide information regarding the effects of the T&Cs on the ownership and control of business users’ intellectual property rights.

changes in how well-informed business users are with regard to these services' behaviour. It also has not yet resulted in increased fairness.

These findings reiterate that effective compliance requires a genuine, well-thought-through and consistent effort by online intermediation services to live up to the spirit and the letter of the P2B Regulation. For the potential of contractual transparency to be achieved, the information provided must be meaningful and respected in practice.

2.3. Baseline and results – due process and redress mechanisms (Articles 11 to 15)

2.3.1. Article 11 – internal complaint-handling system

In studies conducted prior to the entry into force of the P2B Regulation, a significant friction in resolving disputes with online intermediation services was observed.

The present preliminary implementation analysis hints at the situation remaining similar, with 11% of business users included in the 2022 survey bringing issues into the internal complaint-handling system, and 8% of these indicating that their issue was not resolved, with a further 48% reporting that it was partially resolved. There are different reasons brought forward by business users for the lack of effectiveness of these complaint-handling systems, including the length of the proceedings, biased proceedings, a general lack of effectiveness and more. Business users also explained that these perceived shortcomings, as well as prior bad experiences, may deter the broader use of these systems.

The practical reality of the functioning of internal complaint-handling is crucial to assess going forward, as it may be disconnected from the contractual descriptions of these systems. Automation also stands out as a particular issue, with the largest online intermediation services, which also appear to use the greatest degree of automation in complaint-handling, appearing to have the most issues reported by business users. Notwithstanding the need to focus on the practical workings of the internal complaint-handling systems, the preliminary implementation analysis also shows that there for some online intermediation services there appears to be a complete lack of compliance even with the transparency obligations of Article 11. This concerns the obligations to provide detailed information about the functioning of the internal complaint-handling systems and to report statistics about their functioning included in, respectively, Articles 11(3) and 11(4) of the P2B Regulation.

2.3.2. Article 12 – Mediation

The data available before the adoption of the P2B Regulation showed that the use of mediation service was very low, for instance in a study of 2017 it was found that only 6%³¹ of business users resorted to mediation services. The low level was also later

³¹ Ecorys (2017). Business-to-Business relations in the online platform environment. Final report for the European Commission, FWC ENTR/300/2013/FC-WIFO. Ecorys. Luxembourg: Publications Office of the European Union. Available at: <https://op.europa.eu/en/publication-detail/-/publication/04c75b09-4b2b-11e7-aea8-01aa75ed71a1/language-en>.

confirmed prior the entry into force of the P2B regulation, where out of the 997 business users having experienced disputes with the platforms, only 12% of them had recourse to mediation³².

As explained in section 1, the obligation to provide for mediation services in case of dispute, problems are applicable only to large and medium-sized platforms. In this preliminary review, the data gathered show that out the 179 platforms concerned by the obligation under article 12, only 25 platforms provided in their T&C, at least two names of mediators.

2.4. Conclusions – due process and redress mechanisms (Articles 11 to 15)

2.4.1. Complaint handling

The fair and transparent complaint-handling process introduced by the Platform-to-Business Regulation has been a key element of procedural fairness in the relations between online intermediation services and their business users.

The P2B Regulation (Article 11) requires any medium and large online intermediation services to provide an internal system for handling complaints of their business users and sets some requirements on how they should operate. As confirmed by the findings of the final study report, internal complaint-handling systems are the most widely available and used mechanism for addressing complaints and solving business user issues in the online intermediary environment. However, there is no conclusive evidence pointing to clear improvement in the situation since the Regulation came into force.

This finding should be read in the light of the lack of compliance with the P2B Regulation's relevant transparency rules, which require platforms to include information on access to their complaint handling in the terms and conditions. This lack of compliance is especially seen among smaller platforms. Only less than a half of reviewed platforms presented access to complaint handling in their T&Cs and very few platforms published reports on the functioning of their complaint-handling systems. The available reports demonstrate that not all business user complaints are solved, and some platforms still do not disclose this information in their reports³³.

Not all of those having issues with platforms have ever taken any steps to resolve them. The contractor's research showed that in most cases, only businesses facing some issues tend to read a platform's terms and conditions and look for more information on complaint handling and dispute settlement. As a result, not many business users are able to assess the sufficiency of options for redress and the functioning of the internal complaint-handling mechanism.

However, there are indications that those that have had recourse to the internal complaint-handling systems found them effective, reported receiving the needed support

³² Observatory business survey November 2019. Study on 'Support to the Observatory for the Online Platform Economy'. Observatory on the Online Platform Economy.

³³ After reviewing 179 platforms, the research team identified only 19 such reports (10.6%), see Study on evaluation and review of the Platform to business regulation.

from the platform to address their complaints, and reported that their issues were solved satisfactorily.

The seriousness of the issue complained about is another factor that plays a role in assessing the effectiveness of the new rules on complaint handling. Business users who had more important complaints reported various difficulties in the resolution of their complaints. These included long waiting periods, persistent vagueness in the platform responses and difficulties with accessibility of the systems. However, the main issue in the relationships between platforms and their business users is getting individualised and specific support from platforms. The study shows that the issues faced when using the complaint-handling system may actually deter business users from having recourse again to it. This applies in particular to micro business in the hospitality sector, social media platforms and retail, as for these business users the process is too resource-intensive.

The most problematic seem to be systems run by the largest platforms, as they mostly rely on automated complaint-handling systems. The lack of a human counterpart makes it more difficult to ensure that complaints are duly considered, that the complexity of the issue is taken into account and that the complaint resolution is communicated in an individualised manner.

The issues most commonly complained about by business users include technical problems, poor quality of customer service, limitations on payment methods, lack of transparency of platform policies, lack of access to data, sudden changes to contractual terms, unfair T&C, discrimination over pricing/access to data, various types of unfair behaviour by consumers or competitors (e.g. fake reviews, black hat tactics, etc.), and suspension or termination of business accounts³⁴. It is important to note that most of these issues reported are addressed as obligations of the online platforms under the P2B Regulation.

On the other hand, the business users of platforms that implemented P2B provisions cite some improvements are visible as regards the business users of platforms that implemented P2B provisions concerning the suspension and termination of business users' accounts. Such business users now receive information on the potential termination/restriction of accounts, and use the internal complaint-handling systems to address them and get guidance from the platforms.

Interestingly, platforms that are small enterprises and thus excluded from the requirements of Article 11 often comply without problems with the requirements of the internal complaint-handling procedures. They usually provide contact persons for businesses to reach out to directly with their questions and concerns. These interactions are usually not automated, and business users receive personalised support. In business relationships with large platforms, platform internal dispute settlement system is usually the first step that platform business users take.

Overall, introducing rules on internal complaint handling has led to some improvements, although the situation is far from ideal. For business users of big platforms, the biggest problem is the lack of individualised and specific support, whereas for smaller platforms the issue remains the lack of information on access to internal complaint handling. However, the fact that overall not many business users had recourse to internal

³⁴ See Study on Evaluation and Review of the Platform to Business Regulation, p.100.

complaint-handling systems makes it difficult to draw conclusions as to their effectiveness. On the other side, most business users who had recourse to the internal complaint handling found that their issues were fully (42.7%) or partially resolved (47.9%).

2.4.2. Mediation

Under Article 12 of the P2B, medium and large online platforms are obliged to identify in their terms and conditions at least two independent mediators with whom business users can initiate mediation to resolve disputes with the platform. The mediators identified by the platform should fulfil certain requirements, such as impartiality and independence.

As demonstrated by the contractor's assessment, the use of mediation to solve disputes between platforms and business users is still limited³⁵. The vast majority of OISPs and search engines did not have any experience of going through P2B mediation. Similarly, all mediators interviewed by the contractor agreed that the number of dispute resolution cases related to the P2B Regulation was lower than what they had initially expected. Only tens of cases of mediation have been identified 2 years after the P2B Regulation began to apply.

The contractor's research also shows that most business users had never heard of mediation being used to resolve disputes with platforms or that they did not have sufficient information on mediators available to attempt to reach an out-of-court settlement.

The lack of recourse to mediation can be linked, at least somewhat, to the lack of clarity or of any information in the T&C as regards mediation, with platforms not specifying when business users could contact mediators and mediation centres or how the process works.

Moreover, the study showed that most large and medium-sized platforms did not list mediators in their T&Cs, leading to platforms' non-compliance with their obligations under Article 12 P2B. The research revealed that only around 35% of the reviewed large and medium-sized platforms to whom this obligation applies have named mediators that they are willing to engage with in their T&Cs³⁶. For many platforms, it is difficult to identify mediators that could be mentioned in their T&Cs, as there are not too many of them specialising in P2B relationships. The study identified only seven mediation centres in the EU providing mediation services related to the P2B Regulation.

Most online intermediation services that included a mediator in their terms and conditions refer to the Centre for Effective Dispute Resolution (CEDR), based in London, or to the European association e-POM, which provides online mediation services specialised in disputes between online marketplaces and their business customers. In France, the government launched a mediation centre specialised in B2B

³⁵ For instance, the CEDR has recorded 30 cases since July 2020; Polimeni Legal a total of around 10-15 cases, while the Mediator of Enterprises has had 102 cases since 2020.

³⁶ From the sample of 179 large and medium-sized platforms that were assessed by the contractor, only 25 provided the name of at least two mediators in their T&Cs for business users and referred to two mediation centres.

disputes, the Mediator of Enterprises³⁷. However, even in cases where platforms introduced the relevant information and expressed their willingness to engage in mediation in their T&Cs, some business users remain sceptical about the impartiality of mediators or fear damaging their business relations with the platform, on which they are often dependent. Perceptions of costs and resolution periods further contribute to this dispute resolution method being avoided.

To improve business users' awareness about the benefits of mediation and the relevant P2B provisions, some mediation centres ran several communication campaigns³⁸. One of them – CEDR – tried to smooth the process for business users to engage in mediation by offering templates for them to fill in³⁹. However, these measures did not seem to have been effective in increasing the number of mediation cases the CEDR received.

Among surveyed business users who knew and used mediation to resolve a dispute (12.6%), the main difficulties identified when using mediation services concerned the procedure's length, its cost and the lack of enforcement of the resolution. Many business users (42% of those surveyed by the contractor) found the procedure too long. Additionally, 35% found the procedure too expensive, while 33% of them claimed that the resolution was ultimately not enforced.

Another important finding of the study is that most national authorities in charge of monitoring and implementing the P2B Regulation who were interviewed by the contractor were not aware of any mediation cases in relation to the P2B Regulation. They were also often not aware of any mediators dealing with disputes between platforms and business users. Nor does there seem to be any collaboration between national authorities, platforms and their associations to set up new specialised mediators in accordance with Article 13. However, at least seven mediation centres were also identified as relevant specialised mediators for P2B mediation.

List of relevant centres providing P2B mediation

Mediation centres / Mediators	Location	Description
CEDR	UK	Includes a panel of mediators located throughout Europe covering 22 languages, enabling them to operate on a pan-European basis. They also have two specialised schemes to deal with complaints directed at Google and Amazon.
e-POM	Online	Online mediation portal that facilitates the appointment of mediators for specific cases related to platform-to-business relationships.
Bundesverband Onlinehandel (German Federal Association of E-Commerce –	DE	Mediation centre specialised in B2B disputes, which expanded its services to offer mediation services in cases related to the P2B Regulation. Seems to be focused only on the German market as its website is only available in German.

³⁷ In 2019, several platforms operating in France signed a Charter of E-commerce and committed to using the Mediator of Enterprises to resolve persistent disputes with their business users.

³⁸ See: <https://bvoh.de/bvoh-hilft-haendlern-bei-streitbeilegung-mit-marktplaetzen/>.

³⁹ The CEDR's dedicated website on the P2B Regulation is available here: <https://www.cedr.com/p2b/>.

Mediation centres / Mediators	Location	Description
BVOH)		
Reuling Schutte	NL	Centre specialised for 10 years in providing alternative dispute resolution for businesses, and in particular in providing mediation services.
Centrum Mediacji Lewiatan (Lewiatan Mediation Centre)	PL	Centre specialised in B2B mediation, including P2B cases. Part of the Konfederacji Lewiatan (Confederation Lewiatan) which represents 4 100 enterprises and their employees' interests in connection with the EU institutions.
Mediator of Enterprises	FR	Mediation centre established in 2010 by the French government. Provides P2B mediation services to signatories of the Charter of E-Commerce.
Polimeni Legal	IT	Mediation centre specialised in e-commerce and digital marketplaces. Has handled around 10 to 15 mediation cases related to the P2B Regulation.

Source: PPMI own data based on interviews and desk research.

Overall, the contractor's research showed that this dispute resolution method is still not widely used by platforms and their business users. This is mainly because business users have low awareness of the possibility to use mediation and its benefits, as well as platforms' lack of compliance with the obligations to indicate at least two mediators in their T&C and provide relevant information on how to use this procedure. On a positive note, the share of business users who indicated having resorted to mediation to resolve business disputes was higher for the contractor's 2022 survey than for previous surveys.

2.4.3. Need for public enforcement

One of the evaluation study report's key conclusions is that the most effective ways to ensure online intermediation services comply with the P2B Regulation were monitoring/investigations, proactive communication with providers and awareness raising among business users (public enforcement). In Member States that relied solely on enforcement via courts (private enforcement) to ensure compliance with the P2B rules, its effectiveness proved very limited. The Commission also opened infringement proceedings against eight Member States for failure to comply with Article 15 of the P2B Regulation.

Article 15 requires Member States to ensure adequate and effective enforcement of the Regulation. The article, introduced by Council and the Parliament during the 'trilogue' negotiations on the original Commission proposal, reiterates Member States' Treaty obligations. Member States are required to lay down rules setting out measures applicable to infringements and ensure they are implemented. The measures provided for are required to be effective, proportionate and dissuasive.

By the end of June 2023, 21 Member States had adopted national legislation setting out measures to enforce the P2B Regulation⁴⁰. Meanwhile, four more Member States are envisaging or have started legislative procedures to adopt such national legislation on public enforcement⁴¹. More importantly, so far 15⁴² Member States have implemented the Regulation by appointing a public authority responsible for its effective enforcement.

So far, enforcement authorities have not been appointed in 11 Member States. In those countries, private enforcement through courts is the only recourse for business users. However, some of those Member States have already prepared draft legislation giving enforcement powers to public authorities.

Member States that have or are planning to appoint enforcement authorities have entrusted P2B Regulation enforcement mostly to authorities responsible for competition or consumer protection. Some Member States have appointed authorities responsible for communication or telecommunications, technology, or economic policy more broadly⁴³.

Evidence gathered by the study team shows that monitoring and proactive communication with platforms is the most effective way to ensure platform compliance. Most Member States that monitor platform compliance with the P2B Regulation have detected cases of potential shortcomings in platforms' T&Cs. Some Member States have already launched official investigations into platform behaviour. The evidence suggests that non-compliance notices (or injunction orders) are an effective way to encourage platforms to remedy their behaviour. Authorities in France, Italy and Ireland reached out to potentially non-compliant platforms following their monitoring exercise. As a result of this outreach, platforms either made changes to their T&Cs or committed to doing so. Similarly, several public enforcement authorities received complaints from business users concerning online platforms.

Even if the enforcement authorities were not able to deal with individual complaints, the presence of an enforcement authority enables businesses to draw attention to platforms' non-compliance and to seek redress for potential wrongdoing.

For the time being, most Member States report few or no complaints/cases. As evidenced by the study, this may be largely due to lack of awareness of the rights stemming from the P2B Regulation.

As regards the fines that can be imposed on platforms for non-compliance with the P2B Regulation, in 13 Member States⁴⁴ courts can rule on the level of the fine to be imposed, based on the damage incurred by the plaintiff. The fines applicable to infringements of the P2B Regulation vary greatly between Member States. In some Member States, fines can go up to EUR 5 million (FR, PT), while in others the amounts are significantly lower – up to EUR 5 000 (IE) or EUR 14 000 (LV). Some fines are also determined as a percentage of company turnover. For example, in Romania if an OISP is given a warning and is found in violation of the law again within 2 years, a fine is issued ranging between

⁴⁰ AT, BE, BG, CZ, CY, DE, DK, EE, EL, ES, FI, FR, HR, IE, IT, LU, LV, MT, PT, RO, SE. Last update: 2 May 2023.

⁴¹ NL, PL, SK, SI. Last update: 2 May 2023.

⁴² BE, CY, CZ, DK, EE, EL, ES, FR, HR, IE, IT, LU, LV, PT, RO.

⁴³ For a detailed overview of the measures adopted by each Member States see the study report – Tables 14 and 15.

⁴⁴ AT, BG, DE, DK, FI, HU, LT, LU, MT, PL, SE, SI, SK. Last update: 8 June 2022.

0.1% and 1% of the OISP's turnover. In addition, some Member States have put in place additional fines in situations where an online platform fails to comply with the injunction order. This is the case in Cyprus, Estonia, Latvia and Romania. In other Member States the level of fines applicable varies depending on the applicable article of the Regulation (EE, ES) or on the size of the non-compliant online platform (HR, PT). Finally, the administrative procedure of injunction in France allows the Direction générale de la concurrence, de la consommation et de la répression des fraudes (DGCCRF) to issue a daily fine to a platform in cases where it fails to comply with the order within the given time period.

At the same time, the evaluation study report also points to the **limited effectiveness of private enforcement**. The Member States that rely solely on enforcement by courts have chosen either general courts⁴⁵ or specialised ones⁴⁶ for this purpose. Member States that have entrusted specialised courts with the task of enforcing the Regulation have primarily done so due to the speedier proceedings associated with those types of courts.

However, business users are unlikely to seek judicial redress as they fear retaliation. Nor do they wish to jeopardise their relationship with platforms and view this as a costly and lengthy process. Furthermore, online platforms have more resources and dedicated legal departments, further contributing to the power imbalance between small business users and online platforms. Evidence shows that business users may be unlikely to pursue redress regarding concepts such as transparency and fairness as this type of information may be less clear to them. Most of the court cases analysed by the contractor concerned suspension of business user accounts, rather than provision of limited information in platforms' T&Cs. Finally, analysis of court cases in Germany reveals that in several cases German courts dismissed actions for injunctive relief as they ruled that the business user could not have derived individual rights directly from the P2B Regulation.

The implementation of **Article 14 of the P2B Regulation**, aimed at remedying this imbalance of power, has also been found insufficient to ease the process of seeking judicial redress. Only three Member States (AT, IE, ES) had designated authorities by October 2022⁴⁷ and one has withdrawn its notification in the meantime due to non-compliance with all the requirements in Article 14. Therefore, the possibility provided by the P2B for competent national associations to represent business users in courts in their disputes with platforms did not seem to have resulted in easier access to court proceedings. In fact, no relevant court cases have been observed in these countries since the Regulation came into effect. This is also the case in most other EU countries. The study team's findings identified a number of reasons why so few bodies have been designated so far. These include a low level of awareness, lack of resources among associations, strict criteria they have to meet to be designated, and the fact that often the relevant national associations represent both business users and online platforms.

As demonstrated by the evidence gathered by the study team, private enforcement results in limited compliance by platforms due to low risk of detection linked to the absence of

⁴⁵ BG, DE, HU, LT, PL, SI, SK. Last update: 11 May 2022.

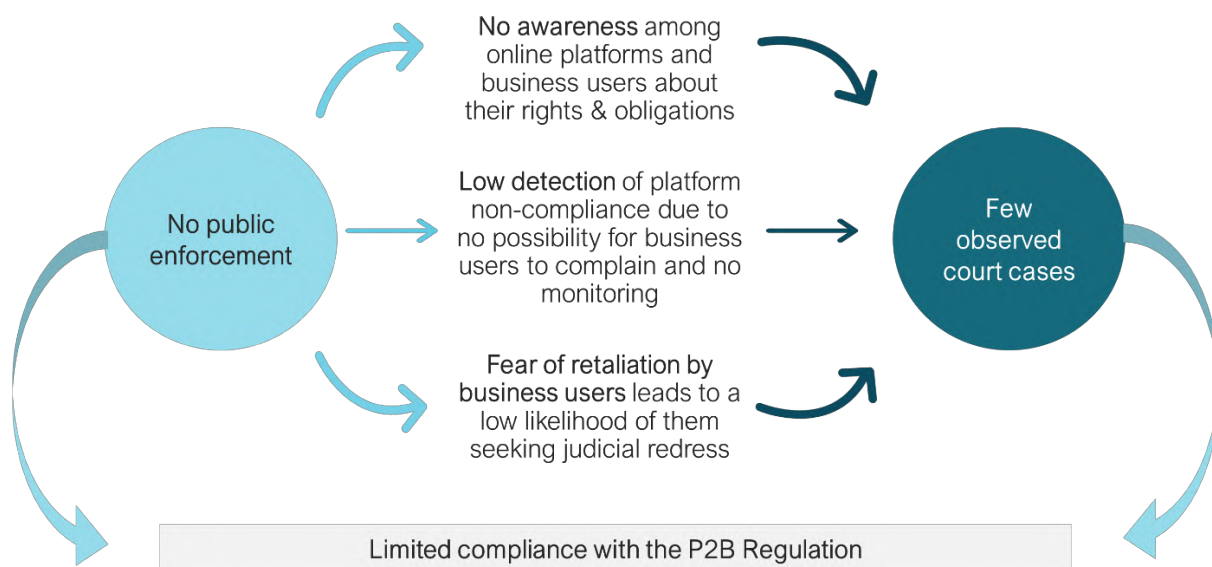
⁴⁶ AT, FI, LU, MT, SE. Last update: 11 May 2022.

⁴⁷ List of designated organisations, associations and public entities drawn up and published pursuant to Article 14(6) of Regulation (EU) 2019/1150 of the European Parliament and of the Council on promoting fairness and transparency for business users of online intermediation services 2021/C 402/05, PUB/2021/796, OJ C 402, 5.10.2021, p. 5–6.

an enforcement authority. Other important factors include limited awareness among both platforms and business users of their rights/obligations and fear of retaliation by business users. The study team’s research showed that stakeholders in countries that launched public consultations when the P2B Regulation was enforced or that adopted a public enforcement approach were generally more aware of the Regulation than those based in countries that relied solely on private enforcement and that have not undertaken awareness-raising measures.

As a result, few court cases related to the P2B Regulation have been identified so far. The study’s findings point to the conclusion that enforcement via courts can act as a supplementary tool to compensate damage incurred by business users, rather than as an enforcement mechanism. Since business users can always seek enforcement of the P2B and compensation for any incurred damages before competent national courts, private enforcement should be rather seen as an add-on to the public enforcement providing redress to business users⁴⁸. The figure below illustrates the limited effectiveness of private enforcement versus public enforcement.

Limited effectiveness of private enforcement



Source: PPMI

As demonstrated above, **relying solely on private enforcement of the P2B Regulation has proved ineffective in ensuring that platforms comply with the P2B rules.**

The study team’s research clearly showed that platform compliance was highest in Member States that appointed an enforcement authority that actively monitored compliance and raised awareness of P2B rules among business users and platforms. In countries with no public enforcement, business users’ awareness of their rights under the

⁴⁸ Synnott, A., Daly K. (2022) ‘Chapter 1 Public V. Private Enforcement: Why Competition Litigation Won’t Solve The Public Enforcement Deficit’, *The Public Competition Enforcement Review*, Law Business Research Ltd, London, 2022.

P2B Regulation and the resulting platform compliance were very low. The interviews run by the contractor concluded that without public enforcement, platforms have little incentive to comply with the Regulation as there is a low risk of penalties for non-compliance.

The fact that thus far court cases related to the P2B Regulation were identified only in four Member States (Germany, Netherlands, France and Sweden) further proves the limited effectiveness of the approach based purely on private enforcement.

As regards the approaches taken by the enforcement authorities in ensuring online platform compliance, they can be divided into two categories: **proactive** and **reactive**.

A **proactive approach** involves active monitoring of platforms' T&Cs to detect platform non-compliance. A total of six Member States⁴⁹ have chosen to monitor platform compliance. Some authorities that proactively monitor the Regulation have already detected cases of potential platform non-compliance. Generally, national enforcement authorities have the right to launch administrative investigations into platform behaviour. Prior to launching a formal investigation, they can issue non-compliance notices to platforms, informing online platforms of suspected breaches and warning of potential investigations if the behaviour is not amended.

However, most Member States have chosen to ensure platform compliance by reacting to complaints from business users rather than proactively checking compliance (**reactive approach**).

It should be underlined that even where Member States provide for public enforcement, business users can still seek enforcement of the Regulation and compensation for any incurred damages before competent national courts.

2.5. Codes of conduct (Article 17)

Article 17 of the P2B Regulation mandates the Commission to encourage OISPs and their associations to draw up codes of conduct together with their business users, including SMEs and their representative organisations. These codes of conduct should be able to contribute to the Regulation's proper application, by taking into account the specific features of the various sectors where OISPs are involved, and the specific characteristics of SMEs.

The Commission should particularly encourage the drafting of codes of conduct intended to contribute to proper application of Article 5 on the presentation of ranking parameters, as well as the adoption and implementation of sector-specific codes of conduct by OISPs, where such sector-specific codes of conduct exist and are widely used.

The evidence gathered by the study team and the overview by the Commission, which also looked at the information shared in the June 2022 P2B workshop, pointed to limited take-up of codes of conduct by the OISPs.

There are a number of reasons for this low take-up. Firstly, as pointed out by some platforms, the P2B Regulation's entry into force coincided with the start of the COVID-

⁴⁹ ES, IE, FR, IT, LV, PL. Last update: 11 May 2022.

19 pandemic, meaning that platforms had other priorities to deal with at the time. In addition, the negotiations and recent adoption of the Digital Markets Act and Digital Services Act meant that platforms' attention was focused on other areas of regulation.

On the other hand, it is very probable that platforms will link the development of the codes of conduct mandated by the DSA with those encouraged by the P2B Regulation. The DSA encourages: (i) the drawing up of voluntary codes of conduct to contribute to the proper application of the DSA with a reporting mechanism and monitoring by the Commission (Article 45); and (ii) the drawing up of specific codes of conduct to increase transparency in the online advertising ecosystem (Article 46).

A number of business associations and platforms interviewed by the contractor expressed support for self-regulation in the form of voluntary codes of conduct. They considered that such codes of conduct work, as businesses are usually motivated by this collaborative approach and have a better understanding of their environment than legislators. In their view, codes of conduct can be a good way to indicate good practices and educate smaller businesses on how to be compliant.

Some business users pointed out that the development of codes of conduct can be burdensome in terms of the extent of voluntary measures agreed and that it was difficult to reach an agreement between the different stakeholders. For platforms, the potential implementation costs constituted a barrier.

As a consequence, very limited action has been taken since the adoption of the P2B Regulation to encourage the development and adoption of codes of conduct. As a result, codes of conduct do not seem to play a significant role in implementation of the P2B Regulation.

However, as underlined by the expert opinion of the Observatory expert group, given the short time since the P2B Regulation came into force, this does not appear to be a cause for concern. Nevertheless, the experts recommend that in future codes of conduct could be used to concretise the application of the P2B Regulation, especially in such sectors as hotel bookings and online marketplaces⁵⁰.

2.6. Limited awareness

The evidence gathered by the study team revealed different levels of awareness about the P2B Regulation. Relevant national associations and the biggest platforms seemed to be more informed about the P2B Regulation than other stakeholder groups.

Awareness was generally low among all stakeholder groups in countries with no public enforcement, as there have been little to no awareness-raising measures in those countries. Business users appear to be the group with the least knowledge about the P2B Regulation. This was confirmed by the survey conducted for another study run for the European Commission, on 'Support to the Observatory for the Online Platform Economy'. When asked whether business users have any experience with enforcement of

⁵⁰ Opinion of the Expert Group for the EU Observatory on the Online Platform Economy for the Evaluation of the P2B Regulation (to be published on its website).

the P2B Regulation, 91% of respondents indicated that they had no experience or had never heard of it⁵¹. The low level of awareness among business users would partially explain why only seven⁵² Member State authorities reported receiving any type of complaint from business users concerning online platform behaviour⁵³.

Several Member States that appointed an enforcement authority have run continuous awareness-raising campaigns about the P2B Regulation. Even though this is not a requirement under the P2B Regulation, such measures are helpful in raising awareness about the Regulation among both business users and online platforms.

Based on these findings, we can conclude that **proactive awareness raising about the P2B Regulation helps ensure better compliance**. It also helps to incentivise business users to submit complaints to enforcement authorities. This is especially pertinent in countries that do not monitor platform compliance with the Regulation, but rather react to business user complaints. **Proactive communication is also helpful in informing platforms about their obligations under the Regulation**. To this end, Dutch and Italian enforcement authorities have put together guidelines for online platforms clarifying how to comply with the P2B Regulation⁵⁴. Collaboration with national associations in reaching out to both stakeholder groups seems a particularly effective method.

In some countries that rely solely on private enforcement, public authorities do nonetheless undertake some awareness-raising activities about the P2B Regulation, one such example being the Maltese Communication Authority. Similarly, in Sweden, the National Board of Trade (*Kommerskollegium*) is responsible for providing information to the public and giving advice when a complaint is lodged.

3. COMPLEMENTARITY WITH OTHER EU ACTS

The P2B Regulation, including its Article 11 on internal complaint handling, applies to all medium-sized and large provider of online intermediation services. Therefore its scope goes beyond the Digital Markets Act (Regulation (EU) 2022/1925) and extends this legal certainty to business building on a mix of ‘gatekeeper’ core platform services and other online intermediation services – including those that may interoperate with gatekeepers.

The P2B Regulation was the first step towards a comprehensive legal framework for the platform economy; this has since been complemented by the adoption of [the DSA](#) and the [DMA](#). However, these instruments are all at an early stage of implementation. While the relationship between the P2B Regulation and the DSA and DMA is well delineated, the interactions and complementarity between them will require further attention, in line with the Opinion of the Expert Group for the Observatory on the Online Platform Economy.

⁵¹ Kantar Public (2022) Business user survey conducted for a study on ‘Support to the Observatory for the Online Platform Economy’, N.318.

⁵² AT, BE, DK, ES, FR, IE, SI, PL. Last update: 11 May 2022.

⁵³ Last update 11 May 2022.

⁵⁴ By the end of 2022, the draft Dutch guidelines were made available online: <https://www.acm.nl/system/files/documents/guidelines-platform-to-business-regulation.pdf>, while Italian guidelines were being revised.

3.1.1. Oversight – spotting potential non-compliance

The transparency of the P2B Regulation can help enforcement authorities to identify and investigate unfair behaviour and perform in-depth testing of any claimed justifications for, for example, differentiated treatment. In this regard, Article 6(5) of the Digital Markets Act already bans more favourable treatment in ranking and related indexing and crawling, while the P2B Regulation provides additional transparency around differentiated treatment in data access, in pricing and in access terms for ancillary services.

The study underpinning the report and this staff working document confirms this specific potential of the P2B Regulation: ‘transparency can be a potent tool enabling authorities to monitor, learn, and – if needed – address developments in the platform economy. However, enforcement of the Regulation by public authorities is either altogether lacking or remains insufficient – especially with regard to proactive approaches that involve the monitoring of platforms. It should be expected that after addressing the issues of enforcement and with the DMA in place, the transparency rules of the P2B Regulation will not only become more relevant, but also more impactful’.

3.1.2. Research – automated tracking of terms and conditions

As mentioned in Section 2.1.2, the Commission’s Joint Research Centre launches, in parallel to this report and staff working document, a public and open-source repository of the terms and conditions for business users of [over 600] online platforms that have been indexed to date. Automated tracking is one of various ways in which transparency facilitates the agency business users and citizens have over how they engage with information online.

This is one practical example of where the EU’s support for open-source technologies can come together with user-centric regulation, to give our societies and business communities the tools to operate online with a sense of control over what they are doing.

The EU has also recently launched the European Centre for Algorithmic Transparency, whose mission is to improve our collective understanding of how algorithms work. Part of its work is to provide scientific and technical expertise to the European Commission’s exclusive supervisory and enforcement role of the systemic obligations on very large online platforms (VLOPs) and very large online search engines (VLOSEs) under the Digital Services Act. The DSA contains, among other things, crucial transparency obligations for citizens. Similar to the P2B Regulation, citizens should know the reasons for termination and suspension of their accounts, and they should be given the main parameters used by online platforms in their recommender systems. Thus, the transparency rules in the P2B Regulation can also be of use for other EU legislations.

The importance of contractual transparency, including for research, is therefore only set to increase as the Commission and EU Member States continue to implement the P2B Regulation, the Digital Services Act and possible future initiatives such as the AI Act and the European Media Freedom Act.

Moreover, the proposed European Media Freedom Act refers, in Article 17, to the P2B Regulation. The aim here is to make it clear that media providers, as business users of online intermediation services, should be offered due process guarantees in content moderation.