



The 'Platform-to-Business' Regulation

A GUIDE TO THE EUROPEAN COMMISSION'S PROPOSALS AND PROPOSED
AMENDMENTS IN THE EUROPEAN PARLIAMENT

The proposed Regulation

The European Commission has issued a proposal for a Regulation on promoting fairness and transparency for business users of online intermediation services, also known as the “Platform-to-Business” Regulation, or “P2B” Regulation. This cross-cutting Regulation includes a **broad definition of what constitutes a ‘platform’** and, as drafted, will apply to a range of business models **including online marketplaces, price comparison service providers, and online intermediaries.**

WHAT WILL THE PROPOSED REGULATION MEAN?

It its current form it will require that platforms’ **terms and conditions (T&Cs) include minimum levels of information** on several areas including:

- **Notice periods** – provide 15 days’ notice of any changes to business users
- **Rankings of goods and services** – the parameters used to determine rankings and how payments by business users can affect these rankings
- **Suspension or termination** – the circumstances in which a platform will suspend or remove a business user from the platform
- **Differentiated treatment** – whether the platform gives preferential treatment to certain business users over others
- **Data access** – how much data the platform collects and how much access business users have to this data
- **Transparency on restrictive contract clauses** – justification will be needed when platforms use price parity or ‘most-favoured-nation’ (MFN) clauses, which limit businesses from using other platforms to sell their goods or services under different conditions.

These information requirements are in addition to new obligations to **establish complaints handling systems** for business users to lodge complaints

against the platform, and to require the **use of third-party mediators** to resolve contentious cases between the platform and their business users. The proposal would also allow organisations and associations to **initiate proceedings on behalf of business users** (or corporate website users) against a platform or search engine who are in breach of the Regulation.

HOW COULD THE PROPOSAL CHANGE?

The European Parliament has started to debate amendments to the proposal. Within the European Parliament, the **Internal Market and Consumer Protection (IMCO) Committee** is the lead Committee on amending the Commission’s proposal. The Committee’s Rapporteur, **Christel Schaldemose MEP (S&D, Denmark)** has published her Draft Report with amendments to the Commission’s text. This Draft Report will be debated in the Committee and Committee Members will be able to table further amendments before a final vote determines the Committee’s position.

Three other European Parliament Committees are providing an ‘Opinion’ to the IMCO Committee’s Report. These are the **Industry, Research and Energy (ITRE) Committee; the Transport and Tourism (TRAN) Committee; and the Legal Affairs (JURI) Committee.** Rapporteurs for these Committees have published their Draft Opinions which will be debated and potentially amended by their Committees before a final vote in each Committee.

The IMCO Committee will then consider the amendments put forward by each Committee in order to finalise a report containing a set of amendments to the Commission’s proposals. This final report **will then be voted on by all MEPs in the European Parliament.**

Overview of the Commission and Parliamentary Committee positions

The tables below compare the Commission’s original proposals with the draft report of the IMCO Committee and the Draft Opinions in the Opinion Committees. The tables indicate whether the amendments put forward so far would extend regulation further than the Commission’s draft. Of course, the positions outlined here are provisional and will be subject to further change as the Parliamentary Committees debate the draft reports.

Key:

- ↑ Amendments would go further than the proposal
- ↓ Amendments would lessen the impact of the proposal
- ↔ Amendments have minimal changes

	Position	Entities	Types of T&Cs	Definitions	Other
	European Commission Proposed text	<ul style="list-style-type: none"> • Platforms (online intermediation services) and businesses that list on their websites (business users). • Online search engines and their corporate website users. 	<ul style="list-style-type: none"> • The proposed Regulation applies to T&Cs that are unilaterally determined by a platform. 	N/A	N/A
	European Parliament IMCO Committee Draft Report	↑ Mobile apps would be brought into the scope of the Regulation.	↑ All T&Cs whether unilaterally determined or not are brought within the scope.	↑ Ancillary goods or services are given a specific definition.	N/A
	European Parliament ITRE Committee Draft Opinion	↑ Voice search would be brought into the scope of the Regulation.	N/A	N/A	↓ The Regulation would not apply in cases where there is existing EU sectoral legislation with the same objective.
	European Parliament TRAN Committee Draft Opinion	↑ Mobile apps would be brought into the scope of the Regulation.	N/A	N/A	N/A
Scope	European Parliament JURI Committee Draft Opinion	↓ Platforms that allow transactions to be concluded offline would be excluded from the Regulation.	N/A	N/A	↓ Provisions in the Regulation would be without prejudice to sectoral measures taken at Union or national level.
		↑ Voice search would be brought into the scope of the Regulation.			

 Terms & Conditions (T&Cs)	Position	Information	Voidability	Notice period	Exemptions
	European Commission Proposed text	<ul style="list-style-type: none"> T&Cs will have to be drafted in clear language, be available at all stages of the commercial relationship and must set out objective grounds for decisions to suspend or terminate business users from a platform. 	<ul style="list-style-type: none"> Changes to T&Cs will be non-binding if a competent court determines that they do not provide this information. 	<ul style="list-style-type: none"> Envisaged changes to T&Cs can only be implemented after a 15-day notice period. Business users can waive this notice period with affirmative action. 	<ul style="list-style-type: none"> Notice will not have to be given if the platform is under a legal obligation to change its T&Cs.
	European Parliament IMCO Committee Draft Report	↑ T&Cs would need to include information on additional distribution channels or affiliate programs which are used to show goods by the platform.	↑ N/A	↑ If changes to T&Cs require significant changes to business users' goods or services, 30 days' notice is required. ↑ Listing new goods or services during the notice period will be taken as affirmative action.	N/A
	European Parliament ITRE Committee Draft Opinion	↑ Examples for grounds for the removal of business users are provided.	↓ A decision from a competent court would not be required to consider T&Cs void.	↑ Any changes to T&Cs will require 15-days' notice. ↑ During this period, business users would not be able to list new goods or services, unless they waive the notice period with affirmative action.	N/A
	European Parliament TRAN Committee Draft Opinion	↑ T&Cs would also include information on additional distribution channels or affiliate programs which are used to show goods or services by the platform. Business users will be able to request not to be listed on these alternative channels.	N/A	↑ A 20-day notice period would be required before making changes to T&Cs.	N/A
	European Parliament JURI Committee Draft Opinion	↑ T&Cs would also include information on additional distribution channels or affiliate programs which are used to show goods or services by the platform. Business users will be able to request not to be listed on these alternative channels.	N/A	↓ Platforms will only have to communicate changes to T&Cs that affect business users in a non-negligible manner. ↓ The notice period would be reduced to 7 days. ↓ Platforms would be able to require business users to accept new T&Cs within the notice period in order for them to list new goods or services.	↓ Notice will not need to be given if changes to T&Cs are made to protect consumers or the integrity of the platform.

X Suspension & Termination	Position	Information provided	Grounds for termination	Notice period	Exemptions
	European Commission Proposed text	<ul style="list-style-type: none"> When a business user is suspended or terminated, the platform must provide reasons for doing so without undue delay. 	<ul style="list-style-type: none"> Specific objective grounds for removal must be provided to business users if they are suspended or terminated, along with specific facts that led to this decision. 	N/A	N/A
	European Parliament IMCO Committee Draft Report	N/A	N/A	↑ Platforms would have to provide 15-days' notice before suspending or terminating a business user.	↓ Notice would not be required if a platform is under a legal obligation to suspend or terminate a business user.
	European Parliament ITRE Committee Draft Opinion	N/A	↓ Platforms would not have to provide specific facts when suspending or terminating a business user, but instead refer to the behaviour of the business user.	N/A	N/A
	European Parliament TRAN Committee Draft Opinion	N/A	↓ Platforms would only have to provide explanations for suspending or terminating a business user upon request.	N/A	N/A
	European Parliament JURI Committee Draft Opinion	N/A	N/A	N/A	N/A

	Position	Information provided – Platforms & Online search engines	Payment	Equal treatment	Other
Ranking	European Commission Proposed text	<ul style="list-style-type: none"> Platforms and search engines must show business users the main parameters used to determine rankings and their relative importance compared to other parameters. This description must include how and to what extent rankings consider the characteristics of goods or services, and the relevance of these characteristics for consumers. 	<ul style="list-style-type: none"> If parameters can be influenced as a result of payment from business users, the platform must include a description of this process in its T&Cs. 	N/A	<ul style="list-style-type: none"> Information on rankings will not need to be provided if this information infringes on company secrets.
	European Parliament IMCO Committee Draft Report	↑ T&Cs would have to show whether the platform, a third party, or business users provide ancillary goods or services and under what terms.	N/A	↑ Ranking parameters would have to be applied non-discriminatorily to all business users with the same type of good or service, or those who provide the same payments to the platform.	N/A
	European Parliament ITRE Committee Draft Opinion	↓ Platforms would not have to show the relative importance of parameters or the relevance of these for consumers.	N/A	N/A	N/A
	European Parliament TRAN Committee Draft Opinion	N/A	N/A	↑ Ranking parameters would have to be applied non-discriminatorily to all business users.	↑ Platforms would be required to appoint a contact person responsible for rankings. ↑ Changes to ranking parameters would need to be communicated to business users. ↓ Any adverse effects on the ranking of business users resulting from incomplete information would not be the fault of the platform.
	European Parliament JURI Committee Draft Opinion	↓ Platforms would not have to reveal ranking parameter information if it would allow for results to be manipulated or for consumers to be misled.	N/A	N/A	N/A

Differentiated Treatment	Position	Information	Additional information required
	European Commission Proposed text	<ul style="list-style-type: none"> Platforms must declare any preferential treatment given to goods or services that they provide themselves or via entities that they control who list on their site. This information must at least include preferential access to data, any preferential ranking, remuneration or access to ancillary services applied to goods or services offered by the platform, or offers to entities which they control who list on their site. 	N/A
	European Parliament IMCO Committee Draft Report	<p>↑ Platforms which control businesses that list on that platform would be required to allow consumers to decide whether they can view goods or services offered by the platform or business users by default.</p>	<p>↑ Platforms would have to include whether a business user which lists on their platform has preferential access to ancillary services or any technical or economic benefits.</p>
	European Parliament ITRE Committee Draft Opinion	<p>↑ Online search engines would also be required to show any preferential treatment that they provide to goods or services offered by the online search engine or entities which they control.</p>	<p>↑ Online search engines and platforms will have to include any preferential treatment provided in default settings.</p>
	European Parliament TRAN Committee Draft Opinion	N/A	N/A
	European Parliament JURI Committee Draft Opinion	<p>↑ Online search engines would also be required to show any preferential treatment that they provide to goods or services offered by the online search engine or entities which they control.</p>	N/A

 Access to data	Position	Platforms' access to data	Business users' access to data	Other
	European Commission Proposed text	<ul style="list-style-type: none"> Platforms will have to describe any access that they have to data that business users generate through the use of the platform. 	<ul style="list-style-type: none"> Platforms will have to describe whether business users have access to data generated through their use of the platform and data generated through the activities of the platform's users. Platforms will also have to describe whether business users have access to data generated from the activities of other business users. 	N/A
	European Parliament IMCO Committee Draft Report	↑ Platforms will have to obtain consent before sharing data generated from the transactions of a business user.	N/A	N/A
	European Parliament ITRE Committee Draft Opinion	↑ Online search engines would have to comply with the same requirements as platforms regarding showing levels of data access.	↑ Online search engines would also have to describe what data access corporate website users have to data generated through the use of the search engine. ↑ Platforms/search engines would be required to give business/corporate website users access to all data held on that business user/corporate website user.	N/A
	European Parliament TRAN Committee Draft Opinion	↑ Platforms would have to describe if this data is made available to third parties.	N/A	↑ Business users would be required to ensure that data which they provide to platforms, particularly on prices, is accurate.
	European Parliament JURI Committee Draft Opinion	N/A	N/A	↑ Business users would be required to ensure that data which they provide to platforms, particularly on prices, is accurate.

Restrictions on MFN clauses	Position	Information	Banned	Other
	European Commission Proposed text	<ul style="list-style-type: none"> Online intermediation services will have to provide their reasoning for the use of MFN clauses in their T&Cs with business users. 	N/A	<ul style="list-style-type: none"> The corresponding article does not limit prohibitions or restrictions on the use of MFN clauses in certain Member States from applying to platforms.
	European Parliament IMCO Committee Draft Report	N/A	N/A	N/A
	European Parliament ITRE Committee Draft Opinion	N/A	↑ MFN clauses would be banned.	N/A
	European Parliament TRAN Committee Draft Opinion	N/A	↑ MFN clauses would be banned.	↑ Platforms would not be able to force business users to give up intellectual property rights, trade marks or brand names.
	European Parliament JURI Committee Draft Opinion	N/A	N/A	↑ The Regulation as a whole is without prejudice to prohibitions or restrictions on the use of MFN clauses in certain Member States that apply to platforms. ↑ Business users would have full control over their intellectual property and platforms may only use intellectual property with the explicit consent of the business user.

 Internal complaints handling	Position	Information	Processing complaints	Communicating outcomes	Reporting	SMEs
	European Commission Proposed text	<ul style="list-style-type: none"> Platforms will have to explain in their T&Cs that there is an internal complaint handling system for business users to be able to lodge protests for alleged non-compliance with the proposed Regulation, technological issues with the platform or the behaviour of the platform itself that negatively affects the business user in a non-negligible way. 	<ul style="list-style-type: none"> Complaints must be processed swiftly and effectively, and the outcome of their processing must be communicated to the business user individually. 	<ul style="list-style-type: none"> Outcomes of complaints must be communicated in an individualised manner. 	<ul style="list-style-type: none"> Annual reports would need to be published on the number of cases lodged, response times, subject matters and decisions taken regarding complaints. 	<ul style="list-style-type: none"> SMEs would be exempt from these requirements.
	European Parliament IMCO Committee Draft Report	N/A	N/A	N/A	N/A	N/A
	European Parliament ITRE Committee Draft Opinion	N/A	↓ The obligation for platforms to process complaints swiftly and effectively would be removed.	↓ Platforms would not have to provide individualised responses to complaints lodged by business users.	↓ Platforms would have to review their complaints systems but this would not need to be done annually, nor made public.	↑ The exemption for SMEs would be removed.
	European Parliament TRAN Committee Draft Opinion	↑ The need for a business user to be negatively affected in a non-negligible way is removed, opening up the scope for complaints.	↑ Platforms would have to process complaints within 40 days.	↓ Platforms would not have to provide individualised responses to complaints lodged by business users.	↓ The details provided would be less strict, with only average times and main types of complaint needed.	N/A
	European Parliament JURI Committee Draft Opinion	N/A	N/A	N/A	↓ The details provided would be less strict, with only average times and main types of complaint needed.	N/A

	Position	Information	Costs	Exemptions
	European Commission Proposed text	<ul style="list-style-type: none"> Platforms must provide information on independent third-party mediators that they are willing to use in order to settle disagreements with business users. These include those that cannot be resolved through an internal complaint handling process. 	<ul style="list-style-type: none"> Online intermediation services will bear at least half of the costs of mediation. 	N/A
	European Parliament IMCO Committee Draft Report	N/A	↓ If the mediator determines that a business user has not acted in good faith, a platform will not have to bear at least half the costs of mediation.	↓ Platforms will not be required to use mediators if the business user has acted in bad faith on a similar case or if they have brought forward multiple unsuccessful cases.
	European Parliament ITRE Committee Draft Opinion	N/A	↓ Platforms would not be required to bear at least half the costs of mediation.	
	European Parliament TRAN Committee Draft Opinion	↓ Entering into mediation would be voluntary for platforms and used only after attempting to resolve issues through internal complaints handling systems.	↓ Platforms would not be required to bear at least half the costs of mediation.	↓ SMEs would not need to appoint mediators.
Mediation	European Parliament JURI Committee Draft Opinion	↓ Platforms would not be obliged to appoint mediators but would be required to aim to appoint them. ↓ Both sides involved in mediation would aim to resolve the case in 25 days or 90 days in for complicated cases. ↓ Platforms would be required to publicly report on the number of cases, their subject matter, the time taken to resolve them and the decision taken.	↓ If the mediator determines that a business user has not acted in good faith, a platform will not have to bear at least half the costs of mediation.	N/A

 Judicial proceedings	Position	Information	Requirements
	European Commission Proposed text	<ul style="list-style-type: none"> Organisations and associations with a legitimate interest in representing business users or corporate website users will be able to take action before national courts in cases of non-compliance with the proposed Regulation against platforms/search engines. 	<ul style="list-style-type: none"> Such organisations or associations must be non-profit making and represent the collective interests of the business users or corporate website users.
	European Parliament IMCO Committee Draft Report	N/A	N/A
	European Parliament ITRE Committee Draft Opinion	N/A	N/A
	European Parliament TRAN Committee Draft Opinion	<ul style="list-style-type: none"> ↑ Organisations or associations would have to be expressly appointed by business users or corporate website users. ↑ Proceedings would not be able to be lodged on decisions taken via an internal complaints system. 	<ul style="list-style-type: none"> ↑ Such organisations would have to fully disclose their membership, governance and finances.
	European Parliament JURI Committee Draft Opinion	<ul style="list-style-type: none"> ↓ Litigations would only be possible in relation to non-compliance with the proposal's measures on information, non-discrimination and access to data. ↑ Member States would be able to implement measures to ensure that private third-party funders of organisations or associations do not receive any direct or indirect financial benefit from litigations. 	N/A

Implementation ✓	Position	Entry into force
	European Commission Proposed text	<ul style="list-style-type: none"> The Regulation will enter into force six months after publication in the Official Journal.
	European Parliament IMCO Committee Draft Report	N/A
	European Parliament ITRE Committee Draft Opinion	N/A
	European Parliament TRAN Committee Draft Opinion	↓↓ The Regulation will enter into force twelve months after publication in the Official Journal.
	European Parliament JURI Committee Draft Opinion	N/A

This guide was compiled by Inline Policy for participants in our webinar: ‘New European regulations for the platform economy: How will businesses be affected?’ held in November 2018.

For more information please contact Shomik Panda on shomik.panda@inlinepolicy.com



The specialists in politics and
regulation for the tech sector

www.inlinepolicy.com