

# The Platform to Business Regulation (the “P2B Regulation”) - why worry?

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Is the new P2B Regulation a call to action for online platforms? The EU Platform to Business (“P2B”) Regulation aims to promote fairness and transparency for the business users of online intermediation services. This regulatory framework seeks to prevent market distortion and encourage healthy competition, which in turn is hoped will increase consumer trust (and choice) in online platforms.

The P2B Regulation came into force in all EU Member States and in the UK (in accordance with the Brexit transition agreements) on 12 July 2020. It targets providers of information society services<sup>1</sup> which facilitate direct transactions between business users and consumers. This includes online platforms and marketplaces, price comparison websites, social media platforms, app stores and search engines (collectively referred to in this update as “platforms”).

## What’s good to know?

There are a number of requirements. Here are some of the issues to be aware of (and consider/action if the P2B Regulation applies to you):

- 1. Extraterritorial scope:** the P2B Regulation applies to all platforms which provide services to business users in the EU, irrespective of the location of the platform itself. In practice, if a user is established or resident in the EU and uses the platform to offer goods and services to consumers in the EU, the platform will be caught by the P2B Regulation.
- 2. Certain unfair practices by platforms are banned:** for example, suspending, terminating or otherwise restricting accounts without clear reasons is prohibited, as is failing to provide T&Cs which are in plain/intelligible language and are easy to locate. Failing to give appropriate notice of changes to the T&Cs or to give 30 days’ notice of definitive termination are likewise banned, subject to exceptions. Many of these practices will fall under the remit of competition (antitrust) laws, and may warrant further consideration.
- 3. Greater transparency:** platforms are required to be more transparent about their ranking system/practices. This may require disclosing the parameters used to rank goods and services, or other advantages that may be given to their own products over others, as well as data collection practices/how data is used. In the event of suspension/termination of an account, the platform needs to give clear reasons and provide the business user with an opportunity to appeal the decision.
- 4. Dispute resolution:** platforms are required to both set up an internal complaint handling procedure, and offer formal mediation options. However, this does not apply to small enterprises (i.e. with fewer than 50 employees and a yearly turnover of less than €10 million). It is worth noting that business associations can take platforms to court for non-compliance with the P2B Regulation.
- 5. Relationships with other laws:** the P2B Regulation applies in addition to other relevant local or European laws (such as contract law, competition law, consumer protection law, unfair commercial practices etc.). In certain instances, a thorough legal analysis may be required to establish whether (and to what extent) certain aspects, for example of contract law, would be impacted by the regulation and would therefore need to be addressed in light of these new requirements.

Some of the requirements included with the new rules are nuanced and need careful contextual consideration. If you have any specific concerns about compliance with the P2B Regulation or wish to discuss anything covered in this update, please contact Tim Ryan or your usual DACB contact.

<sup>1</sup> See Article 1(1)(b) of Directive (EU) 2015/1535 of the European Parliament and of the Council

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