



Questions and Answers

Establishing a Fair, Trusted and Innovation Driven Ecosystem in the Online Platform Economy



Directorate-General for Internal Market,
Industry, Entrepreneurship and SMES

Services in the Single Market and
Digitalisation

Retail and Online Services

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Digital Single Market

E-Commerce & Platforms

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Foreword

This document aims to provide practical guidance on the main provisions of 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 services¹ (the “P2B Regulation”) in view of its application as from 12 July 2020 and to be a source of information thereafter.

It is provided by the Commission’s services for information purposes only. It does not contain any authoritative interpretation of the P2B Regulation and it does not constitute a decision or position of the Commission. It is without prejudice to any such decision or position of the Commission and to the powers of the Court of Justice of the EU to interpret the P2B Regulation in accordance with the EU Treaties.

An earlier Q&A document on the agreed text of the P2B Regulation was prepared by the Commission’s services and published on 14 February 2019².

To consult the text of the P2B Regulation, please see [here](#).

For an overview in the press release, please see [here](#).

Table 1: Key Dates

Publication in the Official Journal	OJ L 186, 11.7.2019, p. 57–79
Application Date	12.7.2020
Review Date	13.1.2022

The document contains information in the form of detailed questions and answers which can be useful to: (i) providers of online intermediation services (sometimes also called “online platforms”) and online search engines (“search engines”) which may need to adapt their commercial practices in accordance with the P2B Regulation; (ii) business users or corporate website users (i.e. the businesses (including private individuals acting in a commercial or professional capacity) that use those online intermediation services and who depend on online search to be visible to their customers, respectively); (iii) representative organisations or associations, or public bodies, in particular as regards their right to take action before competent national courts against providers of online intermediation services and search engines not complying with their obligations; and (iv) for the authorities in the Member States who are responsible for the enforcement of the P2B Regulation. .

This document should be read in conjunction with the Articles and recitals of the P2B Regulation³, which are decisive for determining the rights and obligations of all parties concerned.

As is evident from its title, the P2B Regulation aims to increase fairness and transparency. More specifically, it aims to ensure a fair, predictable, sustainable and trusted online business environment that enables businesses to operate across borders in the internal market⁴.

¹ OJ L 186, 11.7.2019, p. 57–79

² https://ec.europa.eu/commission/presscorner/detail/en/MEMO_19_1169

³ Unless indicated otherwise, the Articles and recitals referred to hereafter are those of the P2B Regulation.

⁴ Recital 7

A short history: Why did the EU propose new rules?

Online intermediation services cover a wide variety of business to consumer relationships, which are intermediated online by providers operating multi-sided services⁵. They include online ecommerce market places, social media, online application (apps) distribution and collaborative market places on which business users are active⁶.

They use information and communication technologies to facilitate interactions (including commercial transactions) between users (business users and consumers), collect and use data about these interactions and enjoy network effects, which make it most valuable for users to operate on the online intermediation services with the most users⁷.

Online intermediation services can be crucial for the commercial success of business users, who use such services to reach consumers⁸. They offer access to new markets and commercial opportunities allowing business users to exploit the benefits of the internal market⁹.

Search engines are also key to the commercial success of all businesses that operate websites¹⁰. Search engines pro-actively crawl, index or tag websites, without the knowledge or active participation of the businesses, to enable them to return the most relevant results to users' queries. They are the source of the significant majority of internet traffic for smaller standalone websites, including those operated by businesses who also use online intermediation services¹¹.

This means online intermediation services and search engines can act as gateways, particularly as they become increasingly important and relied upon by many businesses for market access. This important role of successfully connecting businesses and consumers has enabled online intermediation services to create ecosystems for which they set the rules and enables them to behave in ways in certain cases that can cause significant economic harm. This is aggravated by the fact that these users often do not have alternative channels to reach their consumers. These problematic trading practices (P2B practices) can be harmful as they limit (national and cross-border) sales and innovation, ultimately to the detriment of consumers¹².

The EU examined the imbalance of power, and the potential for online intermediation services and search engines to act unilaterally, and saw that their role was turning from gateways to gatekeepers.

At the same time, Member States started to act at national level to address the issues faced by businesses in their commercial relationships with online intermediation services. Given the

⁵ Recital 10

⁶ Recital 11

⁷ Recital 2

⁸ Recital 2

⁹ Recital 1

¹⁰ Recital 4

¹¹ Commission Staff Working Document, Impact Assessment accompanying the document Proposal for a Regulation of the European Parliament and of the Council on promoting fairness and transparency for business users of online intermediation services, SWD(2018) 138 final PART 1 of 2, page 7.

¹² Recital 2

inherently cross-border nature of online intermediation services and search engines, avoiding divergent national approaches was necessary to avoid fragmentation of the single market. Therefore, on 20 June 2019, the EU adopted the P2B Regulation. As specified in Article 19(2), the P2B Regulation applies from 12 July 2020. This means that, as from the latter date, the rules of the P2B Regulation must be complied with.

In accordance with its Digital Single Market strategy, the Commission proposed the P2B Regulation as a first step to set rules for the online platform economy. As specified in Article 18, if necessary, the Commission may propose that the EU takes additional steps based on its evaluation of the P2B Regulation and monitoring of its effects on the online platform economy.

Additional Information

For more information on why new rules were needed and for facts and figures, please visit: <https://ec.europa.eu/digital-single-market/en/business-business-trading-practices>

1. WHO IS SUBJECT TO THE P2B REGULATION? WHO SHOULD COMPLY WITH IT? THE RIGHT QUESTIONS TO ASK.

The P2B Regulation applies to providers of online intermediation services and search engines (the P2B Regulation uses the terms “online intermediation services” and “online search engines”, as defined in Article 2(2) and (5) of the P2B Regulation respectively). However, not all rules are applicable both to online intermediation services and search engines. Moreover, search engines and online intermediation services are only covered, simply put, in as far as they provide their services within the EU (see Article 1(2); see also *1.3 below*). In addition, some rules for online intermediation services only apply to larger online intermediation services.

The set of rules you need to comply with depends on:

- whether the service you provide is a search engine or an online intermediation service;
- whether any business users established in the EU are active on your online intermediation service or whether any corporate website users established in the EU are findable through your search engine;
- whether any consumers are physically present in the EU that can be reached via or have access to use your online intermediation service or search engine; and
- for some rules on online intermediation services only, the size of your online intermediation service i.e. whether you are a small enterprise¹³ or not.

As a provider of online intermediation services that falls in principle within the scope of the P2B Regulation you need to comply with all the rules in the P2B regulation unless you qualify as a small enterprise, in which case you will be exempted from the obligations to set up a complaint handling system and to specify mediators in your terms and conditions (see *1.4 below*).

¹³ Using Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises C(2003) 1422), according to which small platform businesses would be those with < 50 employees, and a turnover or balance-sheet total of < EUR10 million, while medium platform businesses are those with < 250 staff headcount, and < EUR 50 million annual turnover or < EUR 43 million balance sheet total.

As a provider of a search engine, only the rules requiring transparency in relation to ranking and differentiated treatment apply (Articles 5 and 7).

1.1. Is my company a provider of an online intermediation service?

Under the P2B Regulation you are a provider of online intermediation services if you are a natural or legal person that provides, or offers to provide, “online intermediation services” (Article 2(3))¹⁴. Your services qualify as “online intermediation services” if they meet all of the following requirements (see Article 2(2)):

- (1) they constitute information society services within the meaning of point (b) of Article 1(1) of Directive (EU) 2015/1535¹⁵,
- (2) they allow ‘business users’ to offer goods or services to ‘consumers’,
- (3) 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;
- (4) they are provided to ‘business users’ on the basis of contractual relationships between the provider of the services and the business users.¹⁶

Essentially, the P2B Regulation focusses on online intermediation services that provide services to business users to enable them to reach consumers.

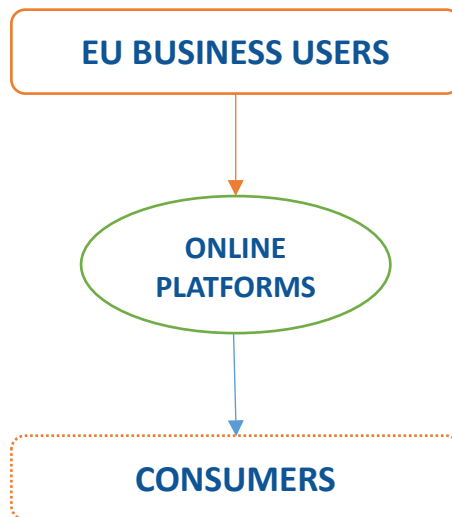
¹⁴ Business users are any private individual that is acting in a commercial or professional capacity, or any legal person, who offers goods or services to consumers through online intermediation services (Article 2(1) (see 6 below)

¹⁵ Information society service, that is to say, any service normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services.

For the purposes of this definition:

- (i) ‘at a distance’ means that the service is provided without the parties being simultaneously present;
- (ii) ‘by electronic means’ means that the service is sent initially and received at its destination by means of electronic equipment for the processing (including digital compression) and storage of data, and entirely transmitted, conveyed and received by wire, by radio, by optical means or by other electromagnetic means;
- (iii) ‘at the individual request of a recipient of services’ means that the service is provided through the transmission of data on individual request.

¹⁶ Recital 10



Key elements of this definition can be further explained:

- ‘Consumers’ are defined in Article 2(4) of the P2B Regulation as any natural person who is acting for purposes which are outside this person’s trade, business, craft or profession.
- ‘Irrespective of where those transactions are concluded’ indicates that it does not matter whether the direct transactions between the business users and consumers, which the online intermediation services aim to facilitate are concluded online (either on the online intermediation service itself or on the online portal of the business user) or, offline; indeed, it does not even matter *whether* such direct transactions are ultimately concluded; what matters is rather that the *aim* of the online intermediation service’s services is to facilitate the initiation of a direct transaction.
- There must be a *contractual relationship* between (1) the online platform providing the online intermediation services and (2) the business using this service to offer goods/services to consumers. This contractual relationship is thus to be distinguished from the ‘direct transactions’ between the business and the consumer, referred to in the previous bullet point. Such contracts exist where both parties concerned express their intention to be bound in an unequivocal and verifiable manner, without an express written agreement necessarily being required¹⁷.

Examples of online intermediation services covered by the P2B Regulation.

Different types of online intermediation services are covered by the P2B Regulation.

The most common examples are e-commerce marketplaces, including collaborative ones, (if also businesses are active on them), such as short-term accommodation rental websites where hosts include professionals (e.g. hotels), app stores and social media for business¹⁸.

¹⁷ Recital 10

¹⁸ Recital 11

Examples of online intermediation services not covered by the P2B Regulation?

The P2B Regulation does not in principle cover¹⁹:

- peer-to-peer online intermediation services without the presence of business users, pure business-to-business online intermediation services which are not offered to consumers, 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 consumers. For the same reason, search engine optimisation software services as well as services which revolve around advertising-blocking software are likewise not intended to be covered by the P2B Regulation;
- technological functionalities and interfaces that merely connect hardware and applications, as they normally do not fulfil the requirements for online intermediation services. However, such functionalities or interfaces can be directly connected or ancillary to certain online intermediation services and where this is the case, the relevant providers of online intermediation services should be subject to transparency requirements related to differentiated treatment based on these functionalities and interfaces.
- 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.

1.2. Is my company a provider of a search engine?

For the purposes of the P2B Regulation, you are a provider of a search engine if all the elements of the definition of that term are present (Article 2(5)). That is you are:

- (1) a digital service,
- (2) that allows users to input queries,
- (3) to perform searches of, in principle, all websites, or all websites in a particular language,
- (4) on the basis of a query on any subject,
- (5) in the form of a keyword, voice request, phrase or other input, and
- (6) returns results in any format in which information to the requested content can be found.

Contrary to online intermediation services, which contract with their business users, search engines do not necessarily have a contractual relationship with their corporate website users²⁰.

1.3. Geographical scope: The two step test

The internet enables online intermediation services and search engines to potentially operate globally and be located anywhere in the world.

According to Article 1(2), the P2B Regulation applies if:

¹⁹ Recital 11

²⁰ Search engines crawl, index and tag websites, without the knowledge or active participation of the business that may own or operate the website. See *footnote 11 above*.

- (1) online intermediation services and search engines are provided, or offered to be provided, to business users and corporate website users, respectively, that have their place of establishment or residence in the Union;

AND

- (2) those business users or corporate website users offer, through the online intermediation service or search engines, goods or services to consumers located in the Union, irrespective of the place of establishment or residence of the providers of those services and irrespective of the law otherwise applicable.

Importantly, the two above criteria are cumulative: both criteria must be met for the P2B Regulation to apply.

In relation to criterion 2, it is important to ascertain, whether the business user or corporate website users directs their activities to consumers located in the EU²¹. This term should be interpreted in line with the relevant case law of the Court of Justice²². Accordingly, a case-by-case assessment will be required, having regard to factors such as the domain names used or the fact that those providers have customers from different Member States (e.g. demonstrated by the posting of reviews from clients from different Member States). In addition, those consumers only need to be located (physically present) in the EU when they use the online intermediation service or the search engine: they do not need to have the nationality of any EU Member State or a place of residence in the EU.

The place of establishment or residence of the provider of the online intermediation services or online search engine does not matter²³. Therefore, the P2B Regulation applies to both EU and non-EU online intermediation services and search engines (i.e. including those that are not established in the EU), if the services provided by the online intermediation services and search engines are offered within the EU in accordance with the two above criteria.

1.4. Is my company a small enterprise? Why does my size matter?

The P2B Regulation also applies to you if you are a provider of an online intermediation service and are a small or microenterprise according to the EU definition for a small enterprise, (i.e. your enterprise counts less than 50 staff members and generates \leq €10 million turnover). **BUT** you do not have to set up or have in place an internal complaint handling mechanism or specify mediators in your terms and conditions (Articles 11(5) and 12(7)). You may however, voluntarily choose to set up such a mechanism²⁴.

²¹ Recital 9

²² The relevant case law of the Court of Justice of the European Union relates to point (c) of Article 17(1) of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ L 351, 20.12.2012, p. 1) and point (b) of Article 6(1) of Regulation (EC) No 593/2008 of the European Parliament and Council of 17 June 2008 on the law applicable to contractual obligations (Rome 1) (OJ L 177, 4.7.2008, p. 6). See in particular judgment of 7 December 2010, Pammer and Hotel Alpenhof (C-585/08 and C-144/09, EU:C:2010:740) para 83.

²³ Article 1(2)

²⁴ Recitals 38 and 41

If you are a search engine, your size does not matter. All search engines are subject to the same set of rules, i.e. transparency on ranking and differentiated treatment (Articles 5 and 7).

1.5. I negotiated the P2B contract. Does the P2B Regulation apply to my company?

Providers of online intermediation services tend to use pre-formulated terms and conditions and to effectively protect business users²⁵, the P2B Regulation applies where terms and conditions are ‘unilaterally determined’²⁶.

Whether terms and conditions are ‘unilaterally determined’ is evaluated case by case on the basis of an overall assessment. For the purposes of that assessment, the factors such as:

- the relative size of the parties concerned;
- the fact that a negotiation took place;
- the fact that certain provisions may have been subject to negotiation and determined together by the parties

are not in themselves decisive.²⁷

2. My company provides an online intermediation service covered by the P2B Regulation. What do I need to do?

2.1. What changes should I make to terms and conditions?

Firstly, pursuant to Article 3(1)(a), terms and conditions must be written in plain and intelligible language.

Terms and conditions should be drafted in a way to give business users a reasonable degree of predictability on the most important aspects of their relationship with the online intermediation service. This will help business users understand the commercial conditions for their use of the online intermediation service and how that use can be terminated or suspended. This means that they must not be vague, unspecific, misleading or lack important detail.²⁸ It is important to remember that many business users of online intermediation services can be micro and small enterprises with limited legal understanding and know-how²⁹.

²⁵ Recital 14. The evaluation of the ECORYS interviews confirm that the impossibility to negotiate or amend terms and conditions was mentioned by a significant 60% of respondents (including 44% of heavy users and 63% of non-heavy users) as a very important factor to consider T&Cs to be unfair ([Study on contractual relationships between online platforms and their professional users FWC JUST/2015/PR/01/0003/Lot1-02 Final Report April 23rd, 2018](#)).

²⁶ Article 2(10)

²⁷ Recital 14

²⁸ Recital 15

²⁹ As stated in recital 2, the P2B Regulation concerns providers who often have superior bargaining power, which enables them to, in effect, behave unilaterally in a way that can be unfair and that can be harmful to the legitimate interests of business users.

Pursuant to Article 3(3), terms and conditions, or specific provisions thereof, that do not comply with the requirements of Article 3(1), shall be null and void. That means that those specific provisions will be deemed never to have existed *ex tunc* (with retroactive effect) with regard to all parties, not just to an individual business user³⁰.

Only the specific provisions that are not written in plain and intelligible language are null and void. The remaining provisions should remain valid and enforceable insofar as they can be separated (severed) from the non-compliant provisions³¹.

Secondly, terms and conditions must include certain obligatory information, in particular:

- (1) A description of the grounds on which the online intermediation service may base its decisions to suspend, terminate or otherwise restrict the use of its services by business users (Article 3(1)(c)). See 2.8 below;
- (2) Information on any additional distribution channels or affiliate programmes (such as other websites, apps or another online intermediation service) it uses to market the goods and services offered by a business user to consumers on the online intermediation service (Article 3(1)(d)). See 2.9 below;
- (3) General information regarding the overall effects, if any, of the terms and conditions on the ownership and control of intellectual property rights of business users (Article 3(1)(e)). See 2.10 below.
- (4) A description of the main parameters determining ranking and the reasons for the relative importance of those main parameters as opposed to other parameters (Article 5(1)). See 2.11 below.
- (5) A description of the possibility, if it exists, to influence ranking against any direct or indirect remuneration paid by business users to the online intermediation service and the effects of such remuneration on ranking (Article 5(3)). See 2.11 below.
- (6) A description of what complementary ('ancillary') goods and services, including financial products³², providers of online intermediation services may propose to consumers alongside a business user's primary offer, irrespective of whether this is offered by the online intermediation service itself or by a third party (Article 6). See 2.13 below.
- (7) A description of whether and under what conditions the business user is also allowed to offer its own complementary ('ancillary') goods and services through the online intermediation service (Article 6). See 2.8 below;
- (8) Information on how online intermediation services providers treat and rank goods or services offered by themselves or by business users they control compared to those offered by third-party business users (Article 7(1)). See 2.9 below.

³⁰ Recital 20

³¹ Recital 20

³² Recital 29

- (9) Information on how and under which conditions a business user can terminate its contractual relationship with the online intermediation service (Article 8 (b)). See *2.10 below*.
- (10) A description of the access, if any, or absence thereof, to any information provided or generated by the business user, where the online intermediation service maintains such access after the end of the contractual relationship (Article 8(c)). See *2.11 below*.
- (11) A description of the data access policies, that is, description of the technical and contractual access, or absence thereof, of business users to any personal data or other data, or both, which business users or consumers provide for the use of the online intermediation services concerned or which are generated through the provision of those services, including the information as to whether business users have access to such data and whether data is provided to third parties (i.e. data which business users or consumers generate when using the online intermediation services) (Article 9(1)). See *2.17 below*;
- (12) In the event where a provider restricts the ability of business users to offer different conditions through other means, a description of the grounds for that restriction. This applies, for instance, where the provider precludes business users from offering goods and services on better conditions or at lower prices on their own website or through other online intermediation services (so called 'most favoured nation' (MFN) clauses) (Article 10). See *2.18 below*.
- (13) Information on how business users can use the internal complaint-handling system and how the system operates (Article 11). See *2.19 below*. Small enterprises, as defined in the Annex to Recommendation 2003/361/EC, are not obliged to provide for such a system.
- (14) The names of two or more mediators with whom the online intermediation service and business users can engage to attempt to reach an agreement to settle, out of court, any disputes that may arise (Article 12(1)). See *2.20 below*. This obligation does not apply to small enterprises, as defined in the Annex to Recommendation 2003/361/EC.

2.2. If I want to change my terms and conditions, what should I do?

Pursuant to Article 3(2), when providers of online intermediation services intend to change their terms and conditions, they must notify their business users of the proposed changes at least 15 days before applying them, subject to exceptions provided in the Regulation (see *2.5 below*). This puts business users in a better position to be able to adapt swiftly to changes.³³

15 days prior notification is the minimum notice period. Depending on the complexity and impact of the change and the need for business users to make complex adaptations, proportionate

³³ Terms and Conditions related issues have led to losses in business users' turnover ranging between 20% to 95% of their total revenue (Factsheet) <https://ec.europa.eu/digital-single-market/en/news/online-platforms-new-rules-increase-transparency-and-fairness>). In Recital 18, the notice period gives business users time to make technical or commercial adaptations in order to comply with the change.

longer periods should apply³⁴. Sudden changes to existing terms and conditions may significantly disrupt business users' operations³⁵.

Examples where longer notice periods may be required:

- *Where entire features of the online intermediation services that are relevant for business users are removed or added³⁶;*
- *Where business users might need to adapt their goods or re-programme their services to be able to continue to operate on the online intermediation service.³⁷*

Providers of online intermediation services have to inform business users of the changes on a durable medium (Article 3(2)). Pursuant to Article 2(13) this is by any means that enables business users to keep such notifications for future reference with all the original information intact (e.g. by e-mail).

As the information on the matters described in sections 2.8 to 2.20 is included in the terms and conditions, it should be recalled that any proposed changes to them need to be notified to business users at least 15 days before these changes are applied, subject to exceptions provided in the P2B Regulation (see 2.5 below).

2.3. Can terms and conditions be changed with retroactive effect?

Pursuant to Article 8(a), providers of online intermediation services may not impose a change in the terms and conditions that has a retroactive effect. The only exception to this is where such changes are required to respect a legal or regulatory obligation or if the changes are beneficial to business users.

This protects the legitimate interests of business users and enables them to operate in a predictable and fair environment online.³⁸

2.4. What happens if I do not give notice of a change to terms and conditions?

Pursuant to Article 3(3), changes to terms and conditions that do not comply with the requirement to give at least 15 days prior notice, shall be null and void. That means they will be deemed never to have existed *ex tunc* (with retroactive effect) with regard to all parties, not just to an individual business user³⁹. This promotes legal certainty for both sides⁴⁰.

³⁴ Recital 18

³⁵ Recital 20

³⁶ Recital 19

³⁷ Recital 19

³⁸ Recital 32

³⁹ Recital 20

⁴⁰ Recital 20

2.5. Are there times when I do not need to apply the notice period in case of changes to terms and conditions?

Pursuant to Article 3(4), the notice period in case of changes to terms and conditions does not apply where an online intermediation service:

- is subject to a legal or regulatory obligation that requires an immediate change to its terms and conditions; or
- where an immediate change to terms and conditions is required, exceptionally, in order to address an unforeseen and imminent danger relating to defending the online intermediation service, consumers or business users from fraud, malware, spam, data breaches or other cybersecurity risks.

This protects business users and provides legal certainty for both business users and online intermediation services. Sudden changes may significantly disrupt business users' operations⁴¹. Therefore, the exceptions to the application of the notice period are limited to the very specific circumstances as set out above.

In addition, proposed editorial changes should not be considered as 'changes' in as far as they do not alter the content or meaning of the terms and conditions⁴².

2.6. Can a business user waive the notice period?

Yes. Pursuant to Article 3(2), the notice period does not apply if a business user waives the notice period in an unambiguous way⁴³. This needs to be done by means either of a written statement or a clear affirmative action.

A business user can waive the notice period through its actions. For example, submitting new goods or services, including software applications, to the online intermediation service, during the 15 day period is to be considered as waiving of the notice period⁴⁴.

However, where the reasonable and proportionate notice period is longer than 15 days because the changes to the terms and conditions require the business user to make significant technical adjustments to its goods or services, the notice period is not considered automatically to be waived when the business user submits new goods and services. This is because changes in terms and conditions that give a business user more time to adapt imply that business users may need to make significant technical adjustments⁴⁵.

If a business user does not agree to the changes, it is entitled to terminate the contract with the online intermediation service within the notice period. Such termination shall take effect within 15 days from the receipt of the notice, unless a shorter period applies to the contract (e.g. due to national civil law).

⁴¹ Recital 20

⁴² Recital 18.

⁴³ Recital 18

⁴⁴ Recital 19

⁴⁵ Recital 19

2.7. What are my other obligations in relation to the terms and conditions?

Pursuant to Article 3(1)(b), business users need to be able to easily find the terms and conditions. Providers of online intermediation services need to ensure that business users always have access to the terms and conditions so that they are aware of the rules that apply to them. The terms and conditions should also, pursuant to Article 3(1)(b), be made available to prospective business users of an online intermediation service, before they enter a relationship with it.

2.8. What explanations are needed in relation to the restriction, suspension or termination of a business users' account (Article 3(1)(c) and Article 4)?

Pursuant to Article 3(1)(c) (which is linked to Article 4), providers of online intermediation services must set out in their terms and conditions a description of the grounds for their decisions to suspend, terminate or otherwise restrict the use of its services by business users.

As the grounds must be included in the terms and conditions, pursuant to Article 3(1)(a), they are also subject to the requirement that they are drafted in plain and intelligible language. The description should help business users understand in which cases providers of online intermediation services could decide to restrict, suspend or terminate the provision of its services to a business user.

2.9. What explanations are needed in relation to additional distribution channels or affiliate programmes that I use to market goods and services of business users (Article 3(1)(d))?

Providers of online intermediation services need to set out in their terms and conditions a description of any additional distribution channels or affiliate programmes (such as other websites or apps) they use to market the goods and services offered by a business user to consumers on its online intermediation service.

As the description must appear in the terms and conditions, pursuant to Article 3(1)(a), it should be drafted in plain and intelligible language. The description should enable businesses to understand where and to whom their goods and services are marketed⁴⁶.

2.10. What explanations are needed in relation to the ownership and control of intellectual property rights (Article 3(1)(e))?

Pursuant to Article 3(1)(e), providers of online intermediation services need to include in their terms and conditions, general information regarding the effects, if any, of those terms and conditions on the ownership and control of intellectual property rights of business users.

As the description must appear in the terms and conditions, pursuant to Article 3(1)(a), it should be drafted in plain and intelligible language. The description should enable business users to

⁴⁶ Recital 21

understand how the terms and conditions may affect their ownership and control of intellectual property rights such as the general usage of logos, trademarks or brand names⁴⁷.

These descriptions are important because the ownership and control of intellectual property rights online are of significant importance for online intermediation services and the business users that use them⁴⁸.

2.11. How should I treat business users' logos or brand names (Article 3(5))?

Pursuant to Recital 21, providers of online intermediation services should not completely prevent a business user from making its trading identity visible as part of the business users' offer or presence on the online intermediation service (e.g. their logos or brand names).

This does not mean however, that business users can unilaterally determine how their offer or presence on an online intermediation service should appear⁴⁹.

2.12. What information do I need to provide business users about ranking? (Article 5⁵⁰)

"Ranking" is defined in Article 2(8) as the relative prominence given to the goods or services offered through online intermediation services as presented, organised or communicated by the provider irrespective of the technological means used to present, organise or communicate it. This can be the result of the use of algorithmic sequencing, rating or review mechanisms, visual highlights or other saliency tools or combinations of these.

Pursuant to Article 5, providers of online intermediation services need to:

- Describe the main parameters determining ranking and the reasons for the relative importance of those main parameters as opposed to other parameters (Article 5(1)); and
- Set out a description of the possibility, if this exists, to influence ranking against any direct or indirect remuneration paid by business users to the online intermediation service and the effects of such remuneration on ranking (Article 5(3)).

Recital 25 contains some examples of possible main parameters

- *The indicators used for measuring the quality of goods or services of business users;*
- *The use of editors and their ability to influence the ranking of those goods or services;*
- *Elements that do not or only remotely relate to the good or service itself, such as presentational features of the online offer.*

In accordance with Article 5(7), the Commission is to adopt guidelines on the ranking transparency requirements. Further information on the guidance under Article 5(7) of the P2B

⁴⁷ Recital 17

⁴⁸ Recital 17

⁴⁹ Recital 21

⁵⁰ In accordance with Article 5(7), the Commission is to adopt guidelines on the ranking transparency requirements.

Regulation is available here (<https://ec.europa.eu/digital-single-market/en/news/ranking-transparency-guidelines-framework-eu-regulation-platform-business-relations-explainer>).

2.13. What explanations are needed in relation to ancillary goods or services (Article 6)?

2.13.1. What should this description contain?

Pursuant to Article 6, where ancillary goods and services, including financial products, are offered to consumers through the online intermediation services, providers of online intermediation services need to include in their terms and conditions a description of:

- (1) the type of ancillary goods and services, including financial products, offered by the online intermediation service to consumers alongside a business user's primary offer, irrespective of whether this is offered by the platform itself or by a third party; and
- (2) whether and under which conditions the business users can also offer their own ancillary goods and services to consumers on an online intermediation service.

As the description must appear in the terms and conditions, pursuant to Article 3(1)(a), it should be drafted in plain and intelligible language.

The description does not need to refer to the specific good or service, but can be more general as long as it is sufficiently descriptive to enable a business user to understand what is being sold ancillary to its products or services.⁵¹

2.13.2. What are ‘ancillary goods and services’?

Ancillary goods and services should be understood as goods and services offered to the consumer immediately prior to the completion of a transaction initiated on online intermediation services to complement the primary good or service being offered by the business user. Ancillary goods and services refer to products that typically depend on, and are directly related to, the primary good or service in order to function. Therefore, the term excludes goods and services that are merely being sold in addition to the primary good or service in question rather than being complementary in their nature.⁵²

Examples of ancillary services include repair services for a specific good or financial products such as car rental insurance offered so as to complement the specific goods or services being offered by the business user. Ancillary goods might include goods that complement the specific product being offered by the business including those that may be an upgrade or customisation tool, linked to the specific product.⁵³

⁵¹ Recital 29

⁵² Recital 29

⁵³ Recital 29

2.14. What explanations are needed in relation to differentiated treatment (Article 7)?

Where providers offer certain goods or services to consumers through their own online intermediation service, or through business users that they control, they might compete directly with other business users operating on the online intermediation service. This may give them economic incentives to use this ability to control to offer technical or economic advantages to its own offers, which it could deny to competing business users. Such behaviour can undermine fair competition and restrict consumer choice.⁵⁴

2.14.1. What should the description under Article 7 contain?

Pursuant to Article 7(1), providers of online intermediation services need to include in their terms and conditions information on how they treat and rank goods or services offered by themselves or by business users they control compared to third party business users.

Business users that are controlled by the online intermediation service are those which the online intermediation service owns or over which it can exercise decisive influence.⁵⁵

The description should refer to the main economic, commercial or legal considerations for such differentiated treatment (Article 7(1)). Pursuant to Article 7(3), the description should refer to specific measures taken by, or the behaviour of, the online intermediation service relating to, in particular:

- access of the relevant online intermediation service to any data, including personal data, which business users, websites or consumers provide for, or generate through, their use of the services concerned;
- ranking or other settings that influence consumer access;
- direct or indirect payment charged for the use of the online intermediation service (monetary or otherwise); and
- access to, conditions for, or any direct or indirect payment charged for the use of services or functionalities, or technical interfaces, that are directly connected or ancillary to the use of the online intermediation service, such as operating systems.

As the description must appear in the terms and conditions, pursuant to Article 3(1)(a), it should be drafted in plain and intelligible language.

2.15. What explanations are needed about how business users can terminate their contractual relationship? (Article 8(b)).

2.15.1. What should this description contain?

Pursuant to Article 8(b), providers of online intermediation services need to include in their terms and conditions information on how and under which conditions a business user can terminate its contractual relationship with the online intermediation service.

⁵⁴ Recital 30

⁵⁵ See the meaning in Article 3(2) of Council Regulation (EC) No. 139/2004 on the control of concentrations between undertakings (the EC Merger Regulation), OJ L 24, 29.1.2004, p. 1

As the description must appear in the terms and conditions, pursuant to Article 3(1)(a), it should be drafted in plain and intelligible language.

2.16. What explanations are needed in relation to access to information at the end of a contractual relationship (Article 8(c))?

2.16.1. What should this description contain?

Pursuant to Article 8(c), providers of online intermediation services need to include in their terms and conditions a description of the access, if any, or absence thereof, to any information linked to the business user, where the online intermediation services provider maintain such access after the end of the contractual relationship. As the description must appear in the terms and conditions, pursuant to Article 3(1)(a), it should be drafted in plain and intelligible language.

2.17. What explanations are needed in relation to access to data (Article 9)?

The ability to access and use data, including personal data, can enable important value creation in the online intermediation service economy, both generally as well as for the business users and online intermediation services involved.⁵⁶

2.17.1. What should this description contain?

Pursuant to Article 9, providers of online intermediation services must include in their terms and conditions information on what technical and contractual access to any personal data or other data, or both, which business users or consumers provide for the use of the online intermediation services concerned or which are generated through the provision of those services, they give to business users. This may also be advising them that no access to data is given.

The description should in particular refer to the scope, nature and conditions of their access to and use of the relevant categories of data such as for instance ratings and reviews⁵⁷.

2.17.2. How detailed do I need to be?

As the description must appear in the terms and conditions, pursuant to Article 3(1)(a), it should be drafted in plain and intelligible language and enable business users to understand whether they can use the data to improve their business themselves or by using third party data services (e.g. data analytics).⁵⁸

In particular, pursuant to Article 9(2), this means that business users are to be given information that can explain:

Firstly, whether:

⁵⁶ Recital 33

⁵⁷ Recital 33

⁵⁸ Recital 33

- providers of online intermediation services have access to personal and/or other data, which business users or consumers provide for the use of the online intermediation service or which are generated in providing those services;
- business users have access to personal and/or other data, provided by that business user in connection with its use of the online intermediation service or which are generated by the online intermediation service in providing those services to that particular business user and to its customers;
- business users have access to personal and/or other data, including in aggregated form, provided by or generated through the provision of the services of the online intermediation service to all of the business users and consumers that use the online intermediation service;
- providers of online intermediation services share any of the data with third parties, specifying the purpose of such data sharing where this is not necessary for the proper functioning of the service and whether the business users can opt out from such data sharing (see 2.17.3 below).

Secondly, if access is given to any of the above, what categories of data and under what conditions, business users can access such data.

The description should be proportionate and might refer to the general conditions of access, rather than be an exhaustive list of actual data points or categories of data. However, identification of and specific access conditions to certain types of actual data that might be highly relevant to business users could also be included in the description.⁵⁹

2.17.3. What information do I need to provide, if I share data with third parties other than my business users? Can business users opt out?

There are additional requirements if an online intermediation service itself has access to personal and/or other data, which business users or consumers provide for the use of the online intermediation service or which are generated through the provision of those services (Article 9(2)(a)) or where such data is provided to third parties (Article 9(2)(d)).

Pursuant to Article 9(2)(d), if data is shared with third parties and the sharing of data with those third parties is not necessary for the proper functioning of the online intermediation service, the description in the terms and conditions needs to explain:

- the purpose of such data sharing; and
- how business users can opt out from such data sharing.

2.17.4. What is the relationship to the obligations under the GDPR⁶⁰?

The requirements under Article 9 are without prejudice to the application of the EU legal provisions on the protection of personal data (Article 9(3)), in particular Regulation (EU) 2016/679⁶¹, Directive (EU) 2016/680⁶² and Directive 2002/58/EC⁶³

⁵⁹ Recital 33

⁶⁰ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ L 119, 4.5.2016, p.1

⁶¹ As 60

Recital 35 further indicates that these requirements should not be understood as an obligation to either share or not to share personal or non-personal data with business users.

2.18. What explanations are needed in relation to restrictions to offer different conditions through other means (Article 10)?

2.18.1. What should this description contain?

Pursuant to Article 10(1), where, in the provision of their services, providers of online intermediation services restrict the ability of business users to offer different conditions through other means (for instances, by means of the so called ‘most favoured nation (MFN) clauses’) online intermediation services providers need to include in their terms and conditions a description of the grounds for which they may restrict business users from offering goods and services on the same or better conditions or at lower prices on their own website or through other online intermediation services.

As the description must appear in the terms and conditions, pursuant to Article 3(1)(a), it should be drafted in plain and intelligible language. The description should refer to the main economic, commercial or legal considerations for these restrictions (Article 10(1)).

2.18.2. What are my other obligations in relation to this description of my use of MFN clauses?

Pursuant to Article 10(1), the description needs to be made easily available to the public.

2.18.3. How does this obligation relate to rules in some EU Member States, which prohibit the use of such restrictions?

Pursuant to Article 10(2), this transparency obligation shall not affect any prohibitions or limitations on the use of such restrictions that result from the application of other acts of EU law or from national law of Member States, which is in accordance with Union law, and to which online intermediation services may be subject to. It should not be understood as affecting the assessment of legality of such restrictions under other provisions of Union law or national law that is in accordance with Union law, including in the areas of competition and unfair commercial practices, and the application of such laws.⁶⁴

⁶² Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA, OJ L119, 4.5.2016, p. 89

⁶³ Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications), OJ L201, 31.7.2002, p.37

⁶⁴ Recital 36

2.19. What is an internal complaint-handling system (Article 11)? What do I need to set up?

In order for business users, including those business user whose use of the online intermediation service may have been restricted, suspended or terminated, to have a means to resolve potential problems, providers of online intermediation services need to provide a complaint-handling system.

2.19.1. What is an internal complaint-handling system?

Pursuant to Article 11(1), all providers of online intermediation services, except providers of small online intermediation services⁶⁵ (Article 11(5)), must set up an internal system for handling the complaints of business users. Providers of small online intermediation services are free to set up such systems on a voluntary basis⁶⁶.

Providers of online intermediation services have a reasonable degree of flexibility in setting up and operating their internal complaint handling systems.⁶⁷ The system can be set up as part of the operations of the online intermediation service or may they can delegate this task to an external service provider or to another part of its corporate structure. If the task is delegated, the provider in charge must have full authority and be able to ensure the requirements of the P2B Regulation are complied with.⁶⁸

Pursuant to Article 11(3), providers of online intermediation services need to include all relevant information in their terms and conditions on how business users can access the internal complaint-handling system and how the system functions.

Pursuant to Article 11(1)⁶⁹, the complaint handling system needs to ensure handling within a reasonable time frame and needs to be, in particular:

- easily accessible to business users;
- free of charge; and
- based on the principles of transparency and equal treatment (see 2.19.8 below).

Specifically, the complaint handling system should be set up in a way so as to enable the provider of online intermediation services to:

- duly consider complaints lodged and the follow-up which they may need to give to the complaint in order to adequately address the issue raised;
- process complaints swiftly and effectively, taking into account the importance and complexity of the issue raised;
- communicate to the complainant the outcome of the internal complaint-handling process, in an individualised manner and drafted in plain and intelligible language⁷⁰.

⁶⁵ Those employing less than 50 staff members and generating less than €10 million turnover. See 1.5 above

⁶⁶ Recital 38

⁶⁷ Recital 38

⁶⁸ Recital 39

⁶⁹ Second paragraph

⁷⁰ Article 11(2).

2.19.2. Who can use the complaint handling system?

Pursuant to Article 11(1), the complaint-handling system is open to all business users using the online intermediation service. It should also be open to those business users whose use of the online intermediation service may have been restricted, suspended or terminated⁷¹.

2.19.3. When can a business use the complaint handling system?

The complaint-handling system should allow business users to lodge complaints in relation to the following rather wide range of matters, which affect the business user lodging the complaint. Article 11(1) indicates these could be:

- alleged non-compliance by the online intermediation service with the obligations in the P2B Regulation;
- technological issues⁷² which relate to the services provided by the online intermediation service; and
- measures taken by, or the behaviour of, the online intermediation service that relate directly to the services provided by the online intermediation service.

2.19.4. How should I respond to complaints?

Pursuant to Article 11(2)(c), once a complaint has been considered, the outcome needs to be communicated to the business user in writing (in plain and intelligible language) in an individualised manner. This must relate to the individual complaint and not be a standard generic response.

2.19.5. How do I protect the complaint-handling system from abuse?

The complaint-handling system can be designed to address any use in bad faith which certain business users might try to use such system for. Any features designed to address this must only be used where necessary and the types of measures taken, proportionate to the abuses they aim to avoid or prevent.⁷³

2.19.6. Do I need to revoke a decision, while it is being considered in the complaint-handling system?

An online intermediation service might continue to apply a decision it has taken (e.g. a decision to suspend a business user's account) in place, while it considers a complaint.⁷⁴

⁷¹ Recital 37

⁷² Technology is at the core of online intermediation services. Any problems relating to the technology used by the online intermediation service, could qualify as a “technological issue” if these issues directly relate to the provision of online intermediation service’s services and affect the complainant. (Article 11(1)(b))

⁷³ Recital 38

⁷⁴ Recital 37

2.19.7. Is the use of the complaint-handling system compulsory?

Not for business users. Business users cannot be forced to use it for example, as a condition for providers of online intermediation services to engage in good faith in any attempt to resolve a dispute using a mediator pursuant to Article 12. However, if a business user does lodge a complaint, a provider of an online intermediation service must respond to that complaint in line with the conditions set out above.

Any attempt to reach an agreement through the complaint-handling system does not affect your right or that of the business user to go to court or to use an alternative dispute resolution mechanism to resolve the same problem, at any time during or after the complaint-handling process.⁷⁵

2.19.8. What information do I need to share with the public about the internal complaint-handling system?

Pursuant to Article 11(4), providers of online intermediation services need to provide information to the public on the functioning and effectiveness of the complaint-handling system.

This information should help business users understand the main types of issues that can arise in the context of relationships with the online intermediation services provider and how it may be possible to reach a quick and effective resolution of disputes with the provider of online intermediation services.⁷⁶

Pursuant to Article 11(4), the information shared needs to include:

- The total number of complaints lodged;
- The main types of complaints;
- The average time needed to process the complaints; and
- The outcome of the complaints (in an aggregated form).

2.19.9. How often should this information be updated?

Pursuant to Article 11(4), the information needs to be constantly publicly available and updated at least once a year. If there are significant changes within that year, the information needs to be updated more regularly.

2.20. How do I choose mediators (Article 12)?

2.20.1. My company is a small online intermediation service, do I need to name mediators?

No. Pursuant to Article 12(7), providers of small online intermediation services – that is, small enterprises within the meaning of Article 2(2) of the Annex to Recommendation 2003/361/EC⁷⁷ - are not subject to the requirement to identify mediators with whom they would like to engage.

⁷⁵ Recital 37

⁷⁶ Recital 37

⁷⁷ Commission Recommendation 2003/361 of 6 May 2003 concerning the definition of micro, small and medium sized enterprises (O.J. L 124, 20.5.2003, p.36). See *1.4 above*.

However, they may voluntarily identify in their terms and conditions mediators meeting the criteria discussed below⁷⁸.

2.20.2. Who can I name as a mediator?

Pursuant to Article 12(1), providers of online intermediation services need to name two or more public or private mediators in their terms and conditions with whom they are willing to engage with in an attempt to reach an agreement to settle, out of court, any disputes that may arise with a business user. The mediators must meet the selection criteria set out in Article 12(2), discussed below.

Article 12(2) requires that the mediators must be:

- impartial and independent;
- providing services that are affordable for the type of business user that uses the particular online intermediation service;
- able to communicate in the language of the terms and conditions, which govern the relationship between the online intermediation service and the business user concerned;
- accessible either physically in the place where the business user is established or resides or who can be contacted using communication technologies;
- able to handle disputes swiftly (potentially also implying an ability to handle a significant number of mediation requests given the large number of business users that tend to be active on online intermediation services); and
- knowledgeable about the commercial nature of relationships between online intermediation service and business users, so that they can contribute effectively to the resolution of disputes.

2.20.3. Does the mediator need to be based in the EU?

Pursuant to Article 12 (1), an online intermediation service may only identify mediators providing their mediation services from a location outside the Union where it is ensured that the business users concerned are not effectively deprived of the benefit of any legal safeguards laid down in Union law or the law of the Member States as a consequence of the mediators providing those services from outside the Union. In particular, the choice of mediator should not deprive business users from the protection granted by EU law in relation to the protection of personal data and trade secrets⁷⁹.

2.20.4. Do I need to use the mediators I have named in the terms and conditions?

Yes, pursuant to Article 12(3), you need to engage in good faith with any attempts to resolve disputes through mediation. However, if you identify a more appropriate mediator to deal with a dispute once it has arisen, that mediator can be used instead of the ones named in the terms and conditions, provided that the business user concerned voluntarily agrees⁸⁰.

⁷⁸ Recital 41

⁷⁹ Recital 40

⁸⁰ Recital 40

2.20.5. What other information do I need to provide to business users about mediation?

Pursuant to Article 12(6), a business user can request, before it decides to use mediation or during the process of mediation, information on the functioning and effectiveness of mediation in helping that online intermediation service resolve disputes.

3. I PROVIDE AN ONLINE INTERMEDIATION SERVICE, WHAT ARE MY RIGHTS AND OBLIGATIONS UNDER THE P2B REGULATION?

3.1. I want to restrict, suspend or terminate a business users' use of my online intermediation service. What do I need to do?

Decisions to restrict, suspend or terminate a business users' use of an online intermediation service significantly affect the interests of the business users that use them.⁸¹

3.1.1. What is the difference between restricting, suspending and terminating the use of an online intermediation service?

If an online intermediation service decides to entirely close a business user's account, this constitutes termination of the use of an online intermediation service. This is considered the most severe measure and before an online intermediation service can terminate an account, there are specific preliminary steps that must be taken first.⁸²

Suspension and restriction are considered less severe and usually refer to an action by an online intermediation service that affects an individual listing of a good or service on their platform. This may be by delisting individual goods or services of a particular business, or by effectively removing a good or service of a particular business from search results. Instead of suspending, providers of online intermediation services can also restrict individual listings of business users for example, through demotion or actions that negatively affect the business' appearance (known as 'dimming'), which can include lowering their ranking.⁸³

3.1.2. What must I do before I restrict or suspend the use of my online intermediation service to a business user?

When an online intermediation service decides to restrict or suspend its services to a business user, pursuant to Article 4(1), it must provide the business user with a statement of reasons for that decision on a durable medium either before or at the same time the restriction or suspension takes effect.

⁸¹ Recital 22

⁸² Recital 23

⁸³ Recital 22

The online intermediation service should also give the business user an opportunity to clarify the facts that led to the decision, for example, by referring them to the complaint-handling system (see 2.19 above), so that they can, where possible, correct their behaviour (Article 4(3)).

3.1.3. What must I do before I terminate the provision of my online intermediation service to a business user?

Pursuant to Article 4(2), when an online intermediation service provider decides to terminate the provision of the whole of its service to a business user, it must provide the business user with a statement of reasons on a durable medium at least 30 days before the termination takes effect.

The online intermediation service provider should also give the business user an opportunity to clarify the facts that led to the decision, for example, by referring it to the complaint-handling system (see 2.19 above), so that it can, where possible, correct its behaviour (Article 4(3)).

3.1.4. Are there any exceptions to the 30 days warning period?

Yes. Pursuant to Article 4(4), providers of online intermediation services do not have to warn business users 30 days in advance when:

- a law or regulatory obligation obliges them to terminate the provision of the whole of its services to a certain business user immediately or with less than 30 days' notice;
- it exercises a right to terminate under an imperative reason contained in national law which is in compliance with Union law; or
- a provider can demonstrate that the business user has repeatedly infringed the terms and conditions, resulting in termination of the provision of the whole of the online intermediation services in question.

A statement of reasons must still be provided, without undue delay, even when the business user has not been warned in advance (Article 4(4)). In certain cases, pursuant to Article 4(5), the statement of reasons may not be required (see 3.1.6 below).

Key provisions can be further explained:

- The “**right to terminate**” comes from national law provisions that allow immediate termination, where, taking into account all the circumstances of a specific case and weighing the interests of both parties, it cannot reasonably be expected that the contractual relationship continues until the end of the warning period.
- Examples of **exceptions** include those that arise in connection with illicit or inappropriate content, the safety of a good or service, counterfeiting, fraud, malware, spam, data breaches, other cybersecurity risks or the suitability of the good or service for minors.⁸⁴

3.1.5. What does the statement of reasons need to contain?

Pursuant to Article 4(5), save for a limited number of exceptions (see 3.1.6 below), a statement of reasons is needed when an online intermediation service provider restricts, suspends or terminates the provision of its services, even where the required minimum 30 days' warning of its

⁸⁴ Recital 23

decision to terminate does not apply. The statement of reasons should enable a business user to understand whether there is scope to challenge the decision⁸⁵.

Pursuant to Article 4(5), the statement of reasons needs to refer, in a proportionate manner (i.e. taking into account the interests of both the provider of the online intermediation service and business user⁸⁶), to:

- the specific facts or circumstances, including contents of third party notifications, that led to the decision to restrict, suspend or terminate; and
- the ground for the decision based on what is listed in the terms and conditions (see 2.8 *above*).

Providers of online intermediation services have to inform business users on a durable medium. This is defined in Article 2(13) as any means that enables business users to keep such notifications for future reference with all the original information intact (e.g. by e-mail).

3.1.6. Are there any exceptions to this requirement to provide a statement of reasons?

Yes. Pursuant to Article 4(5), a statement of reasons does not need to be provided when:

- a law or regulatory obligation obliges a provider of online intermediation service not to provide the specific facts or circumstances or details of the reason contained in the terms and conditions, which led to the decision to restrict, suspend or terminate; or
- a provider can demonstrate that the business user has repeatedly infringed the terms and conditions, resulting in termination of the provision of the whole of the online intermediation services in question.

3.1.7. Once I have restricted, suspended or terminated the use of my online intermediation service, what happens next?

Pursuant to Article 4(3), once a decision to restrict, suspend or terminate a business user has been taken, online intermediation services providers (except providers of small online intermediation services, as explained above) are legally obliged to give business users the opportunity to clarify the facts and circumstances through the complaint handling system. See 2.19 *above*.

3.1.8. Can my decision to restrict, suspend or terminate a business user's account be revoked?

Pursuant to Article 4(3), a decision to restrict, suspend or terminate can of course be revoked if the online intermediation service provider considers, for example, its initial decision was made in error or that the business user made a mistake and remedied it⁸⁷. If the provider of online intermediation service revokes its initial decision, then it is obliged to reinstate the business user

⁸⁵ Recital 22

⁸⁶ Recital 22

⁸⁷ Recital 22

without undue delay and provide any access to personal and/or other data to which it had access before the decision.

3.2. I want to resolve the dispute through mediation, what do I do?

Mediation has been shown to be a flexible and cost-effective alternative to court litigation.

3.2.1. Which mediators can I use?

Providers of online intermediation services are required to identify at least two public or private mediators with whom they are willing to engage and who meet the selection criteria set out in Article 12(2). See 2.20.2 above.

3.2.2. Can I use a different mediator to the ones named in the terms and conditions?

Pursuant to Article 12(1), the mediators identified in the terms and conditions should be mediators with whom you are willing to engage to attempt to reach an agreement on a dispute with a business user. However, if you identify a different mediator to deal with a dispute once it has arisen, this mediator can be used instead of – or in addition to – the ones named in the terms and conditions provided that the business user concerned freely agrees to this change⁸⁸.

3.2.3. Can I force a business user to resolve a dispute through mediation?

No, mediation is an inherently voluntary process, in the sense that the parties are themselves in charge of the process and can start and terminate it at any time⁸⁹.

3.2.4. Who pays the costs of mediation?

Where mediation is pursued under the right granted in Article 12(1), providers of online intermediation services and business users need to share the cost of mediation (Article 12(4)).

Pursuant to Article 12(4), providers of online intermediation services should pay for a reasonable proportion of the mediation costs. What is a reasonable proportion will be decided based on a suggestion by the mediator, who will consider all relevant elements of the case being mediated, in particular:

- the relative merits of the claims made by the provider of online intermediation services and business involved;
- their conduct; and
- the size and financial strength of the parties concerned relative to one another.

⁸⁸ Recital 40

⁸⁹ In line with Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters ([OJ L 136, 24.5.2008, p. 3](#)).

The mediator will have to establish what he considers to be reasonable to include in the calculation of total costs as this forms part of a mediated outcome.⁹⁰

3.2.5. Can I still go to court?

Pursuant to Article 12(5), any attempt to reach an agreement through mediation does not affect your right or that of the business user concerned to go to court or to use any other alternative dispute resolution mechanism to resolve the dispute. The P2B Regulation does not require either party to exhaust the possibility of resolving the dispute through mediation before going to court.

3.2.6. A business user wants to resolve a dispute through mediation. Do I need to engage?

Mediation is a voluntary process, however, pursuant to Article 12(3), providers of online intermediation services are obliged to examine in good faith any requests from business users to use mediation to attempt to resolve a dispute.

In certain circumstances, online intermediation services providers may decide not to engage in mediation. For example, if a business user wishes to engage in mediation on a subject as regards which the same business user has brought previous proceedings and as regards which a mediator has considered that the business user concerned has not acted in good faith or where repeated attempts at mediation have failed.⁹¹

These are however, exceptional circumstances and providers of online intermediation services should engage in good faith in mediation with a business user on matters, as determined by the mediator, which are not related to previous cases.⁹²

3.2.7. Do businesses users need to use the complaint-handling system first?

No. Business users can always attempt to resolve a dispute using mediation without using the complaint handling-system first. This may happen for example, if a business user has complained about a similar problem in the past and feels that it has not been resolved satisfactorily using the complaint-handling system.⁹³

4. I PROVIDE AN ONLINE SEARCH ENGINE. WHAT DO I NEED TO DO?

Articles 5 (ranking) and Article 7 (differentiated treatment) of the P2B Regulation apply to and require steps to be taken by, providers of search engines.

⁹⁰ Recital 41

⁹¹ Recital 42

⁹² Recital 42

⁹³ Recital 42

4.1. What information do I need to provide corporate website users on ranking (Article 5)⁹⁴?

There are two definitions in the P2B Regulation that you need to be aware of:

- 'ranking' is defined in Article 2(8), as the relevance given to search results by search engines as presented, organised or communicated by the provider irrespective of the technological means used to present, organise or communicate it. This can be the result of the use of algorithmic sequencing, rating or review mechanisms, visual highlights or other saliency tools or combinations of these.
- 'corporate website user' is defined in Article 2(7), as any natural or legal person which uses an online interface, meaning any software, including a website or a part thereof and applications, including mobile applications, to offer goods or services to consumers for purposes relating to its trade, business, craft or profession.

Pursuant to Articles 5(2) and (3), providers of search engines need to provide in a publicly available statement

- a description of the main parameters, which individually or collectively are most significant in determining ranking of all indexed websites (belonging to both corporate website users and other websites)⁹⁵ and the relative importance of those main parameters as opposed to other parameters; and
- A description of the possibility, if this exists, to influence ranking against any direct or indirect remuneration paid by business users to the search engine and the effects of such remuneration on ranking.

Pursuant to Article 5(4), if a search engine receives a notice from a third party which makes it change the ranking order in a specific case or delist a particular website, the corporate website user must be offered the possibility to inspect the contents of such notice.

In accordance with Article 5(7), the Commission is to adopt guidelines on the ranking transparency requirements. Further information on the guidance under Article 5(7) of the P2B Regulation is available here (<https://ec.europa.eu/digital-single-market/en/news/ranking-transparency-guidelines-framework-eu-regulation-platform-business-relations-explainer>).

4.2. What information do I need to provide corporate website users about differentiated treatment (Article 7)?

4.2.1. What should the description contain?

Pursuant to Article 7(2), providers of search engines need to provide a description of how they treat and rank goods or services offered by themselves or by corporate website users they control compared to those offered by other corporate website users.

⁹⁴ In accordance with Article 5(7), the Commission is to adopt guidelines on the ranking transparency requirements.

⁹⁵ Search engines crawl websites that can be indexed, regardless of whether these are used to offer goods or services to consumers for professional purposes (i.e. websites of corporate website users) or whether they are used differently.

Corporate website users that are controlled by the online search engine are those which the online search engine owns or over which it can exercise decisive influence.⁹⁶

Pursuant to Article 7(3), the description should refer to the main economic, commercial or legal considerations for such differentiated treatment. This should refer to specific measures taken by, or the behaviour of, the search engine relating to:

- access of the relevant search engine to any data, including personal data, which business users, websites or consumers provide for, or generate through, their use of the services concerned;
- Ranking or other settings that influence consumer access;
- direct or indirect payment charged for the use of the search engine (monetary or otherwise); and
- access to, conditions for, or any direct or indirect payment charged for the use of services or functionalities, or technical interfaces, that are directly connected or ancillary to the use of the online search engine, such as operating systems.

5. WHAT VOLUNTARY ACTION COULD PROVIDERS OF ONLINE INTERMEDIATION SERVICES AND SEARCH ENGINES TAKE?

The P2B Regulation requires the Commission to encourage voluntary action by inviting:

- Providers of online intermediation services to set up organisations to provide mediation services (Article 13); and
- Providers of online intermediation services and search engines to draw up Codes of Conduct (Article 17).

5.1. What are organisations to provide mediation services?

Pursuant to Article 13, the European Commission shall encourage providers of online intermediation services to set up organisation(s) that can provide specialised mediators to facilitate the settlement of disputes with business users out of court. The Commission will work in close cooperation with EU Member States to encourage this. Specialist knowledge by the specialised mediators should namely give both parties more confidence in the mediation process and it should increase the likelihood of successful outcomes. It is thus in the interest of both business users and providers of online intermediation services to have additional, competent bodies for quick and effective dispute resolution.⁹⁷

Pursuant to Article 13, providers of online intermediation services can work individually or together with either other online intermediation services providers or with representative organisations and associations, to set up these organisations.

⁹⁶ See the meaning in Article 3(2) of Council Regulation (EC) No. 139/2004 on the control of concentrations between undertakings (the EC Merger Regulation), OJ L 24, 29.1.2004, p. 1

⁹⁷ Recital 43

5.2. What type of mediators should be provided by these organisations?

The organisation(s) set up pursuant to Article 13 should be able to provide mediators, who fulfil the requirements set out in Article 12(2) (see 2.20.2 above).

5.3. What could Codes of Conduct be about?

Pursuant to Article 17, the Commission shall encourage online intermediation services and search engines providers to draw up Codes of Conduct.

Pursuant to Article 17(1), any Codes of Conduct drawn up by online intermediations services providers and by organisations and associations representing them, together with business users, including SMEs, and their representative organisations, are intended to contribute to the proper application of the P2B Regulation.

Pursuant to Article 17(2), any Codes of Conduct drawn up by search engines providers and organisations and associations representing them are specifically intended to contribute to the proper application of Article 5.

Pursuant to Article 17(3), the Commission will encourage online intermediation services providers to adopt and implement any sector-specific Codes of Conduct that exist or come into being going forward, where these are widely used.

When drawing up such Codes of Conduct, in consultation with all relevant stakeholders, account should be taken of the specific features of the sectors concerned as well as the specific characteristics of SMEs. Any Codes of Conduct should be worded in an objective and non-discriminatory way.⁹⁸

6. INFORMATION FOR BUSINESS USERS OF ONLINE INTERMEDIATION SERVICES

6.1. Am I a business user?

Pursuant to Article 2(1), you are a business user if you are:

Either:

- a private individual acting in a commercial or professional capacity; or
- a legal person (e.g. a company);

and

- you use online intermediation services to offer goods or services to consumers for purposes relating to your trade, business, craft or profession.

It is important to note that if you are a business user, you can also be a corporate website user. This will mean you are also entitled to benefit from the requirements placed on search engines. See 7 below for more information.

⁹⁸ Recital 48

6.2. What does the P2B Regulation mean for me?

As is apparent from the title of the P2B Regulation it is about promoting fairness and transparency for business users of online intermediation services.

Pursuant to Article 3(1)(b), online intermediation services providers need to ensure that their terms and conditions are easily available to business users, including prospective business users (i.e. those that are thinking of using the online intermediation service but who have not yet signed up), at all stages of your commercial relationship with that service.

Under the P2B Regulation, online intermediation services providers are required to update their terms and conditions, so they include a number of descriptions. These will provide you with:

- (1) *A better understanding of when your use of an online intermediation service can be suspended, restricted or terminated.*

Article 3(1)(c) requires online intermediation services providers to describe the grounds on which they may base decisions to suspend, terminate or otherwise restrict the use of their services by business users. This means that you will understand from the outset when online intermediation services providers can stop or restrict your use of the online intermediation service or when they can delist a good or service you may offer through the online intermediation service.⁹⁹

See 3 above for how this will work in practice.

- (2) *A better understanding of where your goods and services are marketed.*

Article 3(1)(d) requires online intermediation services providers to describe what additional distribution channels or affiliate programmes (such as other websites or apps) it uses to market the goods and services you may offer on the online intermediation service. Therefore, you will understand more clearly exactly where the goods and services you offer on the online intermediation service are being marketed.¹⁰⁰

- (3) *A better understanding of how your intellectual property rights are affected.*

Article 3(1)(e) requires online intermediation services providers to explain the effects, if any, of the terms and conditions on the ownership and control of intellectual property rights. If for example, the use of your business' logos, trademarks or brand names are affected by the terms and conditions, this needs to be explained to you.¹⁰¹

- (4) *A better understanding of ranking.*

Article 5(1) requires online intermediation services providers to provide a description of the main parameters determining ranking and the reasons for the relative importance of those main parameters as opposed to other parameters. This will help you understand how your goods or services are ranked and help you make an informed choice on which online intermediation service(s) you may wish to use, as it will enable you to compare the ranking practices of different online intermediation services.

In accordance with Article 5(7), the Commission is to provide guidelines on the transparency requirements related to ranking. Further information on the guidance under Article 5(7) of the

⁹⁹ Recital 15

¹⁰⁰ Recital 16

¹⁰¹ Recital 17

P2B Regulation is available here (<https://ec.europa.eu/digital-single-market/en/news/ranking-transparency-guidelines-framework-eu-regulation-platform-business-relations-explainer>).

(5) A better understanding of what ancillary goods and services, including financial products, online intermediation services providers offer to consumers

Article 6 requires online intermediation services providers to describe what complementary ('ancillary') goods and services, including financial products, they may propose to consumers alongside your good or service. This may be something that the provider of online intermediation services offers itself or something that a third party may offer.

See 2.13.2 *above* for examples.

In addition, Article 6 requires online intermediation services providers to describe whether and if so what complementary goods and services you could offer yourself to consumers on their online intermediation service.

This information is to enable you to understand what is offered together with your good or service and what opportunities there are for you to offer something yourself.¹⁰²

(6) A better understanding of how providers of online intermediation services treat and rank the goods or services they offer themselves.

Article 7 requires online intermediation services providers to provide information on how they treat and rank goods or services offered by themselves or by business users they control compared to third party business users.

Business users that are controlled by the providers of online intermediation services are those which the online intermediation service provider owns or over which it can exercise decisive influence.¹⁰³

An online intermediation service provider might have an economic incentive and ability to use its control over the services it provides to provide technical or economic advantages to its own offering or those offered through a business users it controls, which it could deny to competing business users. Therefore, this information will enable you to understand the measures taken by an online intermediation service provider in this regard.¹⁰⁴

Pursuant to Article 7(3), the required descriptions must include information on the main economic, commercial or legal considerations for such differentiated treatment and in particular explain:

- What access of the relevant online intermediation service to any data, including personal data, which business users, websites or consumers provide for, or generate through, their use of the services concerned;
- ranking or other settings that influence consumer access;
- direct or indirect payment charged for the use of the online intermediation service (monetary or otherwise); and

¹⁰² Recital 29

¹⁰³ See the meaning in Article 3(2) of Council Regulation (EC) No. 139/2004 on the control of concentrations between undertakings (the EC Merger Regulation), OJ L 24, 29.1.2004, p. 1

¹⁰⁴ Recital 30

- access to, conditions for, or any direct or indirect payment charged for the use of services or functionalities, or technical interfaces, that are directly connected or ancillary to the use of the online intermediation service, such as operating systems.

(7) A better understanding of how to end your contractual relationship with an online intermediation service provider and what happens afterwards.

Pursuant to Article 8(b), online intermediation services providers need to provide you with clear information on how and under which conditions you can end your contractual relationship with the online intermediation service.

In addition, pursuant to Article 8(c), providers of online intermediation services need to describe the access, if any, or absence thereof, to any information linked to you, where the provider of online intermediation services maintain such access after the end of the contractual relationship.

(8) A better understanding of what data you and the provider of online intermediation services, respectively, may or may not have access to.

Pursuant to Article 9, online intermediation services providers need to describe:

- their data access policies; and
- whether they share data with other business users or third parties.

The categories of data could be personal or non-personal data, provided by business users and consumers, aggregated data, or data generated through the online intermediation service, i.e. "big data" or insights. The description will not be an exhaustive list of actual data points unless there are certain types of actual data that might be highly relevant to the nature of your business and the other business users that use the online intermediation service.¹⁰⁵ It may also just be a statement advising that no access to data is given.

Pursuant to Article 9(2), the information on data access policies should enable you to understand:

Firstly, whether:

- online intermediation services providers themselves have access to personal and/or other data, which business users or consumers provide for the use of the online intermediation service or which it generates in providing those services;
- you have access to personal and/or other data, provided by you in connection with your use of the online intermediation service or which are generated by the online intermediation service in providing those services to you and your customers.
- you have access to personal and/or other data, including in aggregated form, provided by or generated through the provision of the services of the online intermediation service to all of the business users and consumers that use the online intermediation service.

Secondly, if access is given to any of the above, what categories of data and under what conditions, you can access, or not access, that data (Article 9(1)).

Pursuant to Article 9(2)(d), the information on data provided to third parties and the sharing of which is not necessary for the proper functioning of the online intermediation service, should help you be more aware of:

- the purpose of such data sharing; and

¹⁰⁵ Recital 33

- how business users can opt out from such data sharing.¹⁰⁶

(9) *A better understanding of why an online intermediation service provider may restrict you from offering your goods and services at better prices or on better conditions on your own website or other online intermediation services.*

Pursuant to Article 10, online intermediation services providers need to describe why they attempt to restrict business users from offering goods and services on better conditions or at lower prices on their own website or through other online intermediation services. This is commonly referred to as 'most favoured nation' (MFN) clauses.

This will help you understand whether you can:

- offer better conditions on your own website;
- offer better conditions on other online intermediation services or through other means;
- offer lower prices on your own website;
- offer lower prices on other online intermediation services or through other means.

Pursuant to Article 10(1), the explanation from the provider of online intermediation services will include information on the main economic, commercial or legal considerations for restricting you from offering better conditions or lower prices on your own website or through other channels. This will mean you can understand the reasons why the online intermediation service provider may choose to impose these restrictions on your business¹⁰⁷.

Pursuant to Article 10(2), this obligation shall not affect any prohibitions or limitations on the use of such restrictions pursuant to any EU law or the law of a Member State, which providers of online intermediation services may be subject to. It should not be understood as affecting the legality of such restrictions in those rules, including in the areas of competition and unfair commercial practices, and the application of such laws.¹⁰⁸

(10) *Information on how you can use the complaint-handling system of the online intermediation service provider*

Article 11 requires online intermediation services providers to operate a complaint handling system. See 2.19 above.

(11) *Which mediators you can use to try to reach an agreement to settle, out of court, any disputes that may arise.*

Article 12(1) requires, except where they are small enterprises, (see 1.5 above), online intermediation services providers to name two or more mediators with whom they are willing to engage with in an attempt to reach an agreement to settle, out of court, any disputes that may arise with a business user. See 3.2 above.

If you would like to read more about what exactly providers of online intermediation services need to describe, please see 2 above.

¹⁰⁶ Recital 34

¹⁰⁷ Recital 36

¹⁰⁸ Recital 36

6.3. How does the P2B Regulation ensure I will understand what is written in the terms and conditions?

Pursuant to Article 3(1)(a), terms and conditions need to be written in plain and intelligible language.

This requirement of clear language means online intermediation services providers should give you a reasonable degree of predictability regarding the commercial conditions for your use of the online intermediation service, including how that use can be terminated or suspended by either party¹⁰⁹.

6.3.1. What happens if the terms and conditions are not written clearly?

Pursuant to Article 3(3), terms and conditions that do not comply with the requirement to be written in plain and intelligible language, will be null and void. As a consequence, the particular provision of the terms and conditions where this can be severed, or the overall terms and conditions where individual non-compliant terms cannot be severed, will not apply to your relationship.¹¹⁰

6.3.2. Who decides if the terms and conditions are not written clearly?

This is in principle a case-by-case assessment that should ultimately be decided on by a court.

6.3.3. What can I do if I think the terms and conditions are not written in plain and intelligible language?

Outside court litigation, it is possible that an online intermediation service provider itself comes to the conclusion that (parts of) its terms and conditions are insufficiently clear, following a complaint lodged within its internal complaint-handling mechanism by a business user. Online intermediation services providers may equally perform regular reviews of their terms and conditions and conclude that further clarifications, or alternative language, is required, for example as their experience builds or as technology progresses and complexity increases. Mediators can equally suggest, in specific procedures under Article 12 or even outside that framework, that terms and conditions lacked the required clarity.

6.3.4. Does an online intermediation service provider need to notify me in advance if it changes its terms and conditions?

Yes. Pursuant to Article 3(2), business users need to be advised of changes to terms and conditions in advance.

The notice you receive, needs to:

- (1) advise you of the proposed changes on a durable medium. This means you should receive the notification in a form that you can keep for future reference with all the original information intact (e.g. by e-mail)¹¹¹; and

¹⁰⁹ Recital 15

¹¹⁰ Recital 20

¹¹¹ Article 2(13)

- (2) give you at least 15 days warning, so that you have sufficient time to adapt to the proposed changes or to terminate the contract with the online intermediation service before those changes start to apply.¹¹²

6.3.5. Will I get 15 days' notice of changes in every case?

No. 15 days' prior notification is the minimum. Longer periods may have to be given depending on the complexity and impact of the change and the need for business users to make complex adaptations.¹¹³

Examples where you should expect a notice period longer than 15 days:

- *Where entire features of the online intermediation services that are relevant for business users are removed or added;*
- *Where business users might need to adapt their goods or reprogrammed their services to be able to continue to operate on the online intermediation service.¹¹⁴*

Pursuant to Article 3(4), the notice period does not apply to changes to terms and conditions if:

- a legal or regulatory obligation requires an online intermediation service provider to make a change to its terms and conditions immediately;
- an immediate change to terms and conditions is required to address an unforeseen and imminent danger relating to defending the online intermediation service, consumers or business users from fraud, malware, spam, data breaches or other cybersecurity risks; or
- the changes are of an editorial nature, such as those altering the layout of the terms and conditions, but do not change the content or meaning of any of the terms and conditions.

6.3.6. Can an online intermediation service provider change terms and conditions with retroactive effect?

Pursuant to Article 8(a), online intermediation services providers may not impose a change in the terms and conditions that has a retroactive effect. The exception to this is where online intermediation services providers are under a legal obligation to make such retroactive changes or if the changes are beneficial to business users.

6.3.7. Can I accept a change in the terms and conditions before the end of the notice/warning period? If so, how?

Yes. Pursuant to Article 3(2), you can waive the notice period if you do so in an unambiguous way.

Pursuant to Article 3(2), where the minimum 15 days' notice is given, you can waive the notice period by your actions when you use the online intermediation service. For example where you

¹¹² Recital 18

¹¹³ Recital 18

¹¹⁴ Recital 19

submit new goods or services, including software applications, to the online intermediation service, during the 15 day period.¹¹⁵

Where more than 15 days' notice is given, you will only be able to waive the notice period in a clear and affirmative way, for example by sending a written statement waiving the notice period to the online intermediation service.¹¹⁶ An online intermediation service provider cannot take the submission of new goods or services during the notice period as your agreement to waive the notice period.¹¹⁷

6.3.8. Can I terminate my contractual relationship during the notice period?

Pursuant to Article 3(2), you have the right to terminate the contract with the online intermediation service before the expiry of the notice period. Such termination shall take effect within 15 days from the receipt of the notice given by the online intermediation service provider, unless a shorter period applies to the contract.

6.4. What are my rights when an online intermediation service provider restricts, suspends or terminates my account?

6.4.1. What is the difference between restricting, suspending and terminating the use of an online intermediation service?

If your account is entirely closed, that is, in case of the termination of your use of the whole of online intermediation service, this is considered the most severe measure and before an online intermediation service provider can terminate your account, there are specific preliminary steps that it must take first.¹¹⁸ See *3.1 above*.

Suspension and restriction are considered less severe and usually refer to an action by an online intermediation service provider that affects an individual listing of a good or service on their online intermediation service.¹¹⁹ This may be their action of delisting individual goods or services you offer, or by effectively removing a good or service you offer from search results. Instead of suspending, online intermediation services providers can also restrict the individual listings you offer for example, by demotion or actions that negatively affect your appearance on the online intermediation service (known as 'dimming'), which can include lowering the ranking of the goods or services you offer in search results.

¹¹⁵ Recital 18

¹¹⁶ Recital 18

¹¹⁷ Recital 18

¹¹⁸ Recital 23

¹¹⁹ Recital 23

6.4.2. When can an online intermediation service provider restrict, suspend or terminate my use of the online intermediation services?

Online intermediation services providers need to include a description in the terms and conditions of the grounds on which they may base their decisions to suspend, terminate or otherwise restrict the use of their services by business users (Article 3(1)(c)). See 2.3 above.

6.4.3. What happens if an online intermediation service provider restricts or suspends my ability to sell a good or service on it?

Pursuant to Article 4(1), when an online intermediation service provider decides to restrict or suspend your use of the online intermediation service, it must provide you with a statement of reasons either before or at the same time the restriction or suspension takes effect.

This statement of reasons should give you the opportunity to understand what led to the online intermediation service provider's decision, which may in turn help you correct your behaviour.¹²⁰

You may not receive a statement of reasons in certain circumstances (see 3.1.7 above).

Should you:

- (1) not receive a statement of reasons, where you believe you should do; and/or
- (2) want to try and resolve the problem after your account is restricted or suspended,

you have a number of options. See 6.5 below.

6.4.4. What happens if an online intermediation service provider terminates my use of that online intermediation service?

Before an online intermediation service provider can terminate your use of the whole of its service, pursuant to Article 4(2), you need to receive a statement of reasons at least 30 days before your account is closed.

You will not receive the required 30 or more days' notice in certain circumstances. Pursuant to Article 4(4), this includes where:

- a law or regulatory obligation forces an online intermediation service provider to close your account immediately or with less than 30 days' notice;
- an online intermediation service provider exercises a right to terminate your account under an imperative reason contained in national law which is in compliance with Union law; or
- where you have repeatedly ignored or disregarded the rules contained in the terms and conditions, resulting in the termination of the provisions of the whole of the services in question, which is for the provider to demonstrate.

Pursuant to Article 4(4), you will still be entitled to receive a statement of reasons, without undue delay, even when you have not been warned in advance of the closure of your account.

You may not receive a statement of reasons in certain circumstances (see 3.1.7 above).

Key provisions can be further explained:

- The “**right to terminate**” comes from national law provisions that allow immediate termination, where, taking into account all the circumstances of a specific case and

¹²⁰ Recital 22

weighing the interests of both parties, it cannot reasonably be expected that the contractual relationship continues until the end of the warning period.

- Examples of **exceptions** for the situations described above include those that arise in connection with illicit or inappropriate content, the safety of a good or service, counterfeiting, fraud, malware, spam, data breaches, other cybersecurity risks or the suitability of the good or service for minors¹²¹.

6.4.5. What explanations does the statement of reasons need to contain?

Pursuant to Article 4(5), the statement of reasons needs to refer in a proportionate manner (i.e. taking into account the interests of both provider of online intermediation services and business users¹²²) and should contain a reference to:

- the specific facts or circumstances, including contents of third party notifications, that led to the decision to restrict, suspend or terminate; and
- the ground for the decision based on what is listed in the terms and conditions (see 2.3 *above*).

This should be sent to you in a durable medium, which is defined in Article 2(13) as by any means that you can keep for future reference with all the original information intact (e.g. by e-mail)¹²³.

Pursuant to Article 4(4), you may not receive a statement of reasons if:

- a law or regulatory obligation obliges an online intermediation service provider not to provide the specific facts or circumstances or details of the reason contained in the terms and conditions, which led to the decision to restrict, suspend or terminate; or
- you have demonstrably repeatedly ignored or disregarded the rules contained in the terms and conditions resulting in the termination of the provisions of the whole of the services in question, which is for the provider to demonstrate.

6.4.6. What can I do if I disagree with the facts or circumstances cited in the statement of reasons or if I am not satisfied with the explanation in the statement?

The provider of online intermediation services has to offer you an opportunity to clarify the facts and circumstances of the termination, suspension or restriction using the internal complaint-handling process referred to in Article 11. You also have a number of options to address the termination, suspension or restriction itself, see 6.5 *below*.

6.4.7. What happens if an online intermediation service provider makes a mistake and has restricted, suspended or terminated my account in error? Or if I correct the mistake I made?

An online intermediation service provider can revoke its decision to restrict, suspend or terminate an account if for example, the decision was made in error or if you correct a mistake you did not

¹²¹ Recital 23

¹²² Recital 22

¹²³ See definition of 'durable medium' in Article 2(13)

make in bad faith (Article 4(3)). Where the online intermediation service provider revokes its decision, it needs to reinstate your account without undue delay. Such a reinstatement includes providing you with any access to personal and/or other data that you had from your use of the online intermediation service that was available prior to the decision¹²⁴.

6.5. How does the P2B Regulation help me resolve complaints and disputes with providers of online intermediation services?

The P2B Regulation gives you the following options to resolve disputes that may arise with online intermediation services providers:

- (1) by lodging a complaint in the complaint-handling system, including when you would like to challenge a decision to restrict, suspend or terminate your use of the online intermediation service; and
- (2) through mediation.

Any attempt to reach an agreement through the complaint-handling system or through mediation does not affect applicable rights that you or the online intermediation service provider concerned have to go to court, or your ability to attempt to use, and agree on using, any alternative dispute resolution mechanisms to resolve the dispute.¹²⁵

Furthermore, in the case where an online intermediation service provider does not comply with the obligations in the P2B Regulation, a representative association or organisation, or public bodies set up in EU Member States, may be able to go to a court to stop their non-compliance. See *8 below*.

In addition, pursuant to Article 15, Member States need to ensure adequate and effective enforcement of the rules provided in the P2B Regulation. See *8.2 below*.

You also have the right to take providers of online intermediation services or search engines to the competent court.

6.5.1. What is the complaint-handling system?

Pursuant to Article 11, all online intermediation services providers, except providers of small online intermediation services¹²⁶, must have in place an internal system for handling the complaints of business users. Small online intermediation services providers are free to set up such systems on a voluntary basis.¹²⁷

Online intermediation services providers have a reasonable degree of flexibility in setting up and operating their internal complaint-handling systems¹²⁸. This means that it can be set up as part of their operations, but that they may also, for example, delegate this task to an external service provider or instruct another part of their business group. If the task is delegated, such provider or

¹²⁴ Recital 22

¹²⁵ Recital 37

¹²⁶ Those employing less than 50 staff members and generating less than €10 million turnover. See 1.5above.

¹²⁷ Recital 38

¹²⁸ Recital 38

other corporate structure must have full authority and the ability to ensure compliance of the complaint handling system with the requirements of the P2B Regulation.¹²⁹

There are however, certain minimum requirements, which ensure that the system is easily accessible (i.e. easy to use) and free of charge to business users. In addition, there needs to be sufficient information available for you to understand how it works and how well it addresses problems.¹³⁰

Pursuant to Article 11(1)¹³¹, the complaint handling system needs to ensure handling within a reasonable time frame and needs to be, in particular:

- easily accessible to business users;
- free of charge; and
- based on the principles of transparency and equal treatment (see 2.14.8 below).

Pursuant to Article 11(2), the complaint handling system should be set up in a way so as to enable the provider of online intermediation services to:

- duly consider complaints lodged and the follow-up which they may need to give to the complaint in order to adequately address the issue raised;
- process complaints swiftly and effectively, taking into account the importance and complexity of the issue raised;
- communicate to the complainant the outcome of the internal complaint-handling process, in an individualised manner and drafted in plain and intelligible language¹³².

Online intermediation services providers are required to explain how the complaint-handling system works in the terms and conditions (Article 11(3)). You should also receive at least 15 days' advance warning of any changes to the way the system works (Article 3(2)).

In addition, pursuant Article 11(4), online intermediation services providers are required to explain to the public how effective their complaint-handling system is. This will help you understand the main types of issues that can arise with a particular online intermediation service, including the number of complaints lodged, the main types of complaints, the average time needed to process the complaints and the outcome of the complaints (in an aggregated form that does not refer to the individual involved). This information needs to be verified and possibly updated at least once a year, but if there are significant changes within that year, it should be updated more regularly.

6.5.2. Who can use the complaint-handling system?

All business users using the online intermediation service should be able to use the complaint-handling system. This includes those whose use of the online intermediation service may have been restricted, suspended or terminated¹³³.

¹²⁹ Recital 39

¹³⁰ Article 11(1)

¹³¹ Second paragraph

¹³² Article 11(2).

¹³³ Recital 37

6.5.3. When can I use the complaint-handling system?

Pursuant to Article 11(1), you can lodge complaints in relation to issues that affect your business, which arise:

- when you believe an online intermediation service provider is not complying with the obligations laid down in the P2B Regulation;
- when your complaint concerns technological issues that relate directly to the services provided by the online intermediation service; and
- when your complaint concerns measures taken by, or the behaviour of, the online intermediation service provider which relate directly to the services they provide to you.

6.5.4. How quickly should I expect a response to my complaint? How will an online intermediation service provider respond to me?

The aim of the complaint-handling system is to ensure that a significant proportion of complaints can be solved bilaterally by the online intermediation service provider and the business user in a reasonable period of time.

Pursuant to Articles 11(1) and 11(2)(b) and (c), online intermediation services providers are required to swiftly and effectively process complaints in a manner that is proportionate to their importance and complexity and provide you with an individualised response within a 'reasonable time frame'. How long this may take in practice, will depend on each individual case and its complexity

Pursuant to Article 11(2)(c), once a complaint has been considered, you should receive from the online intermediation service the outcome of its consideration of your complaint. This must be an individualised response, which relates to your individual complaint and not be a standard generic response. It also must be written in plain and intelligible language. This means that the explanation must not be vague, unspecific, misleading or lack important detail¹³⁴.

6.5.5. Is the use of the complaint-handling system compulsory?

No.

6.6. I want to resolve my dispute through mediation, what do I do?

6.6.1. What is mediation?

Mediation is a structured process where two or more parties to a dispute attempt by themselves, on a voluntary basis, to reach an agreement on the settlement of their dispute with the assistance of a mediator (Article 2(12)).

6.6.2. Which mediators can I use?

Should you decide to try to resolve a problem with an online intermediation service provider using mediation, you can, for instance:

¹³⁴ Recital 15

- use the mediators named by the provider of online intermediation services in the terms and conditions. These mediators must meet the requirements set out in Article 12(2). See 2.20.2 *above*; or
- seek the provider of online intermediation service’s agreement to use a different or additional mediator, of your choosing, should you wish. The provider of online intermediation services is not, however, obliged to agree to use a mediator that you propose¹³⁵; or
- agree to use a mediator that the provider of online intermediation services suggests, as an alternative or addition to the ones named in the terms and conditions. You are not obliged to agree to use the alternative mediator that the online intermediation service provider suggests.

6.6.3. Do I have to resolve a dispute through mediation?

No, mediation is by its very nature is a voluntary process. In making a decision whether to use mediation to resolve an issue, you must comply with your obligation in Article 12(3) (which also applies to the provider of an online intermediation service) to engage in good faith with attempts to mediate (see 6.5.4 *above*).

6.6.4. Do I have to use the complaint-handling system before I try to resolve a problem using mediation?

No. You can attempt to resolve a complaint using mediation without using the complaint-handling system first.

6.6.5. Does a provider of an online intermediation service have to engage throughout my attempts to settle a dispute using mediation?

Yes. If you attempt to use mediation to resolve a dispute, pursuant to Article 12(3), the provider of an online intermediation service is obliged to engage in good faith.

Providers of online intermediation services may decide in individual cases not to engage in mediation. For example, if a business user wishes to engage in mediation on a subject the business user has brought previous proceedings on and a mediator has considered that the business user has not acted in good faith or where repeated attempts at mediation have failed.¹³⁶

These are however, exceptional circumstances and providers of online intermediation services should engage in good faith with a request from a business user on matters, as determined by the mediator, which are not related to previous cases.¹³⁷

¹³⁵ Recital 40

¹³⁶ Recital 42

¹³⁷ Recital 42

6.6.6. Who pays the costs of mediation?

Pursuant to Article 12(4), providers of online intermediation services and business users need to pay for a reasonable proportion of the total cost. What is a reasonable proportion will be decided by taking into account all relevant elements of the case at hand, based on a suggestion by the mediator, in particular considering:

- the relative merits of the claims made you and the online intermediation service provider involved;
- your and the online intermediation service provider's conduct; and
- your relative size and financial strength compared to the online intermediation service provider.

The mediator will suggest what proportion he considers to be reasonable in the individual case.¹³⁸

6.6.7. Can I still go to court?

Pursuant to Article 12(5), any attempt to reach an agreement through mediation does not affect your right or that of the online intermediation service provider to go to the competent court or to use other alternative dispute resolution mechanisms to resolve the dispute. The P2B Regulation does not require either party to exhaust the possibility of resolving the dispute through mediation, before going to court. As mediation is voluntary, you can also abort an attempt of mediation part way through, and initiate judicial proceedings.

6.6.8. When can a representative organisation or association take an online intermediation service provider to court?

As many business users who use online intermediation services have limited financial means, fear retaliation from online intermediation services providers if they are outspoken against them or are subject to a contractual requirement to go to a non-EU court to resolve problems, organisations, associations who have a legitimate interest in representing business users, or public bodies established in Member States, can take action before the competent national courts in the Union.¹³⁹

This means that a representative organisation or association, or a public body as exists in some Member States, if it fulfils the requirements of Article 14(3), has the right to take action before the competent national courts, in accordance with the rules of the law of the Member State.

The purpose of the judicial action must be to stop or prohibit any non-compliance by providers of online intermediation services or by providers of online search engines, with the relevant requirements laid down in the P2B Regulation.

For more information on who can take an online intermediation service provider to court in this way and when, see 8 *below*.

¹³⁸ Recital 41

¹³⁹ Recital 44

6.6.9. Can I complain to a national authority?

Pursuant to Article 15, Member States must ensure adequate and effective enforcement of the rules in the P2B Regulation.

7. AM I A CORPORATE WEBSITE USER? WHAT DOES THE P2B REGULATION MEAN FOR ME? WHAT ARE MY NEW RIGHTS?

7.1. Am I a corporate website user?

Pursuant to Article 2(7), you are a corporate website user if you are:

Either:

- a natural person (private individual) or legal person (e.g. a company);

And

- you use an online interface (e.g. software, including a website, and applications, including mobile applications) to offer goods or services to consumers for purposes relating to your trade, business, craft or profession.

7.2. What are my rights under the P2B Regulation?

(1) A better understanding of ranking.

Article 5(2) requires providers of search engines to provide a description of the main parameters determining ranking and the reasons for the relative importance of those main parameters as opposed to other parameters. This will help you understand how search results are ranked. As providers of search engines only need to identify the main parameters that determine ranking, this should help you improve the websites or descriptions of the goods and services you on those websites.

Pursuant to Article 5(4), if a search engine receives a notice from a third party which makes it change the ranking order in a specific case or delist a particular website, you must be offered the possibility to inspect the contents of such notice.

In accordance with Article 5(7), the Commission is to provide guidelines on the transparency requirements related to ranking. Further information on the guidance under Article 5(7) of the P2B Regulation is available here (<https://ec.europa.eu/digital-single-market/en/news/ranking-transparency-guidelines-framework-eu-regulation-platform-business-relations-explainer>).

(2) A better understanding of how search engines treat and rank the goods or services they offer themselves.

Article 7(2) requires providers of search engines to provide information on how they treat and rank goods or services offered by themselves or by corporate website user they control compared to third party corporate website users.

Corporate website users that are controlled by the search engine are those which the search engine owns or over which it can exercise decisive influence.¹⁴⁰

A search engine might have an economic incentive and ability to use its control over the services it provides to provide technical or economic advantages to its own online interfaces (e.g. websites) or the online interfaces (e.g. websites) of the businesses it controls. Therefore, this information will enable you to understand the measures taken by a search engine in this regard.¹⁴¹

Pursuant to Article 7(3), the required descriptions must include information on the main economic, commercial or legal considerations for such differentiated treatment and in particular explain:

- What access of the relevant search engine has to any data, including personal data, which business users, websites or consumers provide for, or generate through, their use of the services concerned;
- ranking or other settings that influence consumer access;
- direct or indirect payment charged for the use of the search engine (monetary or otherwise); and
- access to, conditions for, or any direct or indirect payment charged for the use of services or functionalities, or technical interfaces, that are directly connected or ancillary to the use of the online intermediation service, such as operating systems.

7.3. How does the P2B Regulation help me resolve complaints and disputes with search engines?

In the case where a search engine does not comply with the obligations in the P2B Regulation, a representative association or organisation, or public bodies established in Member States, may have the right to take action before competent national courts in the Union, in accordance with the rules of the law of the Member State where the action is brought, to stop or prohibit their non-compliance. See *8 below*.

In addition, pursuant to Article 15, Member States need to ensure adequate and effective enforcement of the rules in the P2B Regulation. See *7.5 below*.

You also have the right to initiate judicial proceedings before the competent court against a search engine if it does not comply with the P2B Regulation.

7.4. When can a representative organisation or association take a search engine to court?

As many corporate website users who use search engines are affected by having limited financial means or fear retaliation from a search engine if they are outspoken against them¹⁴², pursuant to Article 14 of the P2B Regulation, organisations, associations who represent corporate website

¹⁴⁰ See the meaning in Article 3(2) of Council Regulation (EC) No. 139/2004 on the control of concentrations between undertakings (the EC Merger Regulation), OJ L 24, 29.1.2004, p. 1

¹⁴¹ Recital 31

¹⁴² Recital 44

users or public bodies set up in Member States can take action before the competent national courts in the Union.

This means that a representative organisation or association, or a public body, if it fulfils the requirements of Article 14(3), has the right to take action before the competent national courts, in accordance with the rules of the law of the Member State.

The purpose of the judicial action must be to stop or prohibit any non-compliance by providers of online intermediation services or by providers of online search engines, with the relevant requirements laid down in the P2B Regulation.

7.5. Can I complain to a national authority?

Pursuant to Article 15, Member States must ensure adequate and effective enforcement of the rules in the P2B Regulation.

8. AM I A REPRESENTATIVE ORGANISATION OR ASSOCIATION? WHEN CAN I TAKE A PROVIDER OF ONLINE INTERMEDIATION SERVICES OR SEARCH ENGINE TO COURT? WHEN CAN PUBLIC BODIES TAKE AN ONLINE INTERMEDIATION SERVICE OR SEARCH ENGINE TO COURT?

Article 14(1) grants representative organisations or associations, or a public body in a Member State, subject to certain requirements, the right to challenge a provider of online intermediation services or an search engine in the competent national court in the Union, even though they are not a ‘business user’ or ‘corporate website user’ as defined in the P2B Regulation.

The purpose of the judicial action must be to stop or prohibit any non-compliance by providers of online intermediation services or by providers of online search engines, with the relevant requirements laid down in the P2B Regulation. The action before the competent national courts is brought in accordance with national procedural requirements¹⁴³.

8.1. Am I a representative organisation or association?

8.1.1. What criteria do I need to meet?

Pursuant to Article 14(3), in order to have the right to take action as a representative organisation or association you must fulfil the following requirements:

- you must be properly established in accordance with the law of a Member State;
- you must pursue objectives that are in the collective interest of the group of businesses or corporate website users you represent and represent them on a sustained basis;
- you must be of a non-profit making character;
- your decision-making must not be unduly influenced by a third party providers of financing, in particular by any provider of online intermediation services or search engines.

¹⁴³ Recital 44

The criteria has been included to ensure that the organisations or associations that exercise this right, do so effectively and appropriately. The requirements should prevent organisations or associations being set up ad hoc to pursue a specific action or specific actions, or for the sake of making profits. It also, should be ensured that there is no undue influence by third party providers of financing on decision-making by those organisations or associations. In addition, to avoid a conflict of interest, organisations and associations representing business users or corporate website users should, in particular, be prevented from being subject to the undue influence from any providers of online intermediation services or search engines ¹⁴⁴

Organisations or associations are required to fully and publicly disclosure information on membership and source of finance, to facilitate national courts' assessment whether these criteria are met. ¹⁴⁵

8.1.2. What public bodies can take a provider of online intermediation services or search engine to court?

Pursuant to Article 14(4), in Member States where public bodies have been set up, they too will have the right provided for in Article 14(1) to take action against a provider of online intermediation services or search engine in a competent national court in the Union, in accordance with applicable rules.

8.1.3. How do I get my representative organisation or association onto the official list of designated organisations? Will the list include public bodies?

Pursuant to Article 14(5), Member States may designate organisations or associations established in that Member State that meet at least the requirements of Article 14(3) at the request of those organisations or associations, as well as public bodies set up in their Member State that meet the requirements of Article 14(4), that are granted the right to take judicial action. Member States must communicate to the Commission the name and purpose of any such designated organisations, associations or public bodies.

8.1.4. Where can I find the official list of designated organisations, associations or public bodies?

Pursuant to Article 14(6), the Commission shall draw up a list of the organisations, associations and public bodies designated by the Member States pursuant to Article 14(5). This list will be published in the *Official Journal of the European Union* without delay and, in any event, updated every six months.

8.1.5. What does being on the official list of designated organisations mean?

Pursuant to Article 14(7), the competent court shall accept the list that is published in the *Official Journal of the European Union* (pursuant to Article 14(6)) as proof of the legal capacity of the organisation, association or public body. However, this is without prejudice to the court's right to

¹⁴⁴ Recital 44

¹⁴⁵ Article 14(2) and recital 44

examine whether the purpose of the claimant justifies its taking action in a specific case. t. This aims to offer legal certainty and predictability to the business users and corporate website users that rely on those organisations, associations or public bodies to take cases to court. . It should also make the court case quicker and more efficient.¹⁴⁶

Pursuant to Article 14(8), if a Member State or the Commission raises concerns regarding the compliance by an organisation or association with the criteria in Article 14(1)(3) (see 8.1.1 above) or a public body with the criteria in Article 14(4) (see 8.1.2 above), the Member State that designated the organisation, association or public body shall investigate the concerns and where appropriate, revoke the designation if one or more of the criteria are not complied with.¹⁴⁷

8.1.6. If I appear on the official list, can my right to bring a case still be challenged?

Yes. Pursuant to Article 14(7), a court has a right to examine whether the purpose of the claimant justifies its taking action in a specific case.

In addition, pursuant to Article 14(8), an organisation, association or public body may have its designation revoked¹⁴⁸

8.1.7. What if I am not on the official list, can I still take a provider of online intermediation services or search engine to court?

Yes. Organisations that are not designated by the Member States can still bring a case to court and the court will examine whether they meet the criteria provided in Article 14(3) (see 2.13.2).¹⁴⁹

8.1.8. As a representative organisation, association or public body, what type of action could I bring?

Pursuant to Article 14(1), the organisation, association or public body has the right to take action before competent national courts in the Union, in accordance with the law of the Member State where the action is brought, to stop or prohibit any non-compliance by a provider of online intermediation services or search engines with the rules in the P2B Regulation.

8.2. Can I complain to a national authority?

Pursuant to Article 15, Member States need to ensure adequate and effective enforcement of the rules in the P2B Regulation.

¹⁴⁶ Recital 45

¹⁴⁷ Recital 45

¹⁴⁸ Recital 45

¹⁴⁹ Recital 45

9. I AM A PROVIDER OF AN ONLINE INTERMEDIATION SERVICE OR A SEARCH ENGINE. WHAT DO I NEED TO KNOW ABOUT HOW A REPRESENTATIVE ORGANISATION, ASSOCIATION OR PUBLIC BODY CAN TAKE ME TO COURT?

9.1. When can an organisation, association or public body take me to court?

Pursuant to Article 14(1), a representative association or organisation, or public bodies set up in Member States, shall have the right to take action before competent national courts in the Union, in accordance with the rules of the law of the Member States where the action is brought, to stop or prohibit any non-compliance with the rules in the P2B Regulation.

9.1.1. Who can take me to court?

Representative organisations, associations or public bodies that meet the criteria set out in Article 14(3) can take you to court. Pursuant to Article 14(5), Member States may designate which organisations, associations or public bodies have this right and communicate this to the Commission. Pursuant to Article 14(6), the Commission will draw up a list of organisations that it will publish in the *Official Journal of the European Union*. For further information, see 8.1 above.

9.1.2. Will courts examine the legal capacity of the organisation, association or public body to take me to court, even if they appear on the official list?

Pursuant to Article 14(7), courts shall accept the list of designated organisations, associations or public bodies pursuant to Article 14(6), but the court reserves a right to examine whether the purpose of the claimant justifies its taking action in a specific case.

10. I AM A PROVIDER OF AN ONLINE INTERMEDIATION SERVICE OR A SEARCH ENGINE. WHAT DO I NEED TO KNOW ABOUT HOW MEMBER STATES CAN ENFORCE THE P2B REGULATION?

Pursuant to Article 15, Member States must ensure adequate and effective enforcement of the rules in the P2B Regulation.

11. WHEN WILL THE P2B REGULATION BE REVIEWED AND HOW WILL THE IMPACT OF THE P2B REGULATION BE MONITORED?

Pursuant to Article 16 of the P2B Regulation, the Commission in cooperation with the Member States shall closely monitor the impact of the P2B Regulation on the relationship between providers of online intermediation services and business users and between providers of search engines and corporate website users.

To this end, the Commission will also gather information to monitor these changes, for example, by carrying out studies, asking online intermediation services providers and search engines providers to cooperate in good faith and share information and looking at the descriptions that online intermediation services and search engines provide in response to the obligations in the P2B Regulation. Member States will help this task by providing information including on specific cases.

Furthermore, pursuant to Article 18, the Commission is to evaluate the P2B Regulation. This will take place by 13 January 2022 and then every three years. The review first and subsequent evaluations will determine whether additional rules, including regarding enforcement, may be required to ensure a fair, predictable, sustainable and trusted online business environment. Following the evaluations, the Commission shall take appropriate measures, which may include legislative proposals.

12. WHAT IS THE OBSERVATORY FOR THE ONLINE PLATFORM ECONOMY?

The Commission set up the Observatory for the Online Platform Economy (‘Observatory’) in order to monitor future trends in the market and emerging issues, especially those related to the relative bargaining power of online intermediation services, and the effective implementation of the P2B Regulation. You can find more information on its composition and work here: <https://platformobservatory.eu/>