



Commercial Law Newsletter

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



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Regulation (EU) 2019/1150 on promoting fairness and transparency for business users of online intermediation services

❖ Introduction

Regulation (EU) 2019/1150 (the “**Regulation**”), which was adopted by the European Parliament and the European Council on June 20, 2019 and shall be effective as of July 12th 2020, aims at ensuring the fair and transparent treatment of business users and corporate website users by providers of online intermediation services (online platforms) and online search engines, creating a predictable and innovation-friendly regulatory environment for online platforms and online search engines within the EU.

Its scope of application extends to online platforms¹ and online search engines 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 which, through those online platforms or online search engines, offer goods or services to consumers located in the Union irrespective of the place of establishment or residence of the providers of those services and of the law otherwise applicable.

❖ Obligations of providers of online platforms

In accordance with the Regulation, providers of online platforms must ensure that their terms and conditions:

- are drafted in plain and intelligible language;
- are easily available to business users at all stages of their commercial relationship with the provider of online intermediation services, including pre-contractual stage;
- determine the grounds for decisions to suspend, terminate or impose any other restrictions, in whole or in part, regarding the provision of online intermediation services to business users;

¹ Online intermediation services (online platforms) are defined in detail in article 2(2) of the Regulation and include online e-commerce market places, including collaborative ones, on which business users are active, online software application services, such as application stores and online social media services, irrespective of the technology used to provide such services.



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- inform about any additional distribution channels and potential affiliate programs through which providers of online platforms can market goods and services offered;
- include general information with regard to the effects of the terms and conditions regarding ownership and control of the intellectual property rights of business users.

In addition, providers of online platforms must:

- notify on a durable medium the business users concerned at least fifteen (15) days in advance of any modifications of their terms and conditions unless they are subject to a specific legal or regulatory obligation or the said modifications are deemed necessary in order to address unforeseen and imminent cybersecurity risks;
- act in good faith by: a) refraining from implementing retroactive changes to terms and conditions, unless they are subject to a legal obligation or in case such retroactive changes are beneficial for the business users; b) ensuring that their terms and conditions include information about the conditions under which business users may exercise their rights to terminate the contractual relationship with the provider of online intermediation services; and c) providing a description of the technical and contractual access, or its absence, to the data provided or generated by their business users following the termination of their contract.

❖ **Restriction, suspension, termination**

- In case a provider of an online platform decides to restrict or suspend the provision of its online intermediation services to a given business user in relation to individual goods or services offered by such user, the provider shall provide the business user concerned prior to or at the time of the restriction or suspension taking effect, with a statement of reasons for that decision on a durable medium.
- In case a provider of an online platform decides to terminate the provision of its online intermediation services to a given business user in whole, such provider shall provide the business user concerned with a statement of reasons for that decision on a durable medium, at least thirty (30) days prior to the termination taking effect.

Such notice period is not applicable if the provider is subject to a legal or a regulatory obligation or exercises a right of termination under an imperative reason pursuant to national law or can demonstrate that the business user concerned has repeatedly infringed the applicable terms and conditions resulting in the termination of the provision of the online intermediation services in question in whole.



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❖ **Rankings**

Providers of online platforms shall set out in their terms and conditions the main parameters determining the ranking and the relative importance thereof compared to all other parameters. The same obligation applies to providers of online search engines.

In case the main parameters include the possibility to influence ranking against any direct or indirect remuneration paid by business users or corporate website users, explicitly describe such possibilities and effects of such remuneration.

❖ **Differentiated treatment -Restrictions to offer different conditions through other means**

Providers of online platforms shall include in their terms and conditions a description of any differentiated treatment which they give in relation to goods or services offered to consumers through such services by, on the one hand, either that provider itself or any business users controlled by that provider, or, on the other hand, other business users. The same obligation applies to providers of online search engines in case of similar differentiated treatment.

If, in the course of their services, providers of online intermediation services restrict business users from offering the same goods or services to consumers under different conditions through other means than those [services](#), these providers should include in their terms and conditions the grounds for such restrictions and make such grounds easily available to the public.

❖ **Complaints, mediation and redress**

- Online platform providers employing more than fifty (50) persons or achieving more than EUR 10 million in annual turnover must establish and operate an internal system for handling complaints from business users about: a) non-compliance of the providers with a legal obligation laid down in the Regulation; b) any technological issues arising, measures taken or behavior observed by the providers, that could affect the complainant; and (c) measures taken by, or behavior of, that provider which relate directly to the provision of the online intermediation services and which affect the complainant.

Complaints must be processed swiftly and effectively, and the outcome must be communicated individually, in plain and intelligible language.



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- Providers of online platforms should identify in their terms and conditions two (2) or more mediators willing to engage to an attempt to agree with the business users on an out of court settlement regarding any disputes between such providers and business users, including complaints that cannot be resolved through the means of internal complaint handling system.
- Organisations and associations, which meet specific requirements laid down in the Regulation, having a legitimate interest in representing business users or corporate website users as well as public bodies set up in Member States, shall have the right to take action before competent national courts in the Union to stop or prohibit any non-compliance by providers of online mediation services or online search engines.

❖ Enforcement

Each Member State shall: (i) ensure adequate and effective enforcement of the Regulation; (ii) lay down the rules setting out the measures applicable to infringements of the Regulation; and (iii) ensure their implementation.

It should be noted that a legislative preparatory committee has already been set up in Greece in order to receive complementary measures for the implementation of the Regulation.

With regard to the enforcement of the Regulation, it remains to be seen whether Greece shall adopt a private or public enforcement system and in the latter case (public enforcement system), the authority which shall be entrusted with such enforcement.

The present newsletter contains general information only and is not intended to provide specific professional advice or services.

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