



Český telekomunikační úřad

## **CTU Guide for implementation of the P2B Regulation**

Version: April 28<sup>th</sup>, 2023

Online intermediation services and search engines are an increasingly important part of the digital economy. They provide businesses with easy access to new markets and business opportunities without the need for large upfront investments and, thanks to them, consumers can choose from a wider range of goods and services, making business exchange easier and helping to ensure a competitive market environment. The growing number of transactions conducted through online platforms, however, is leading to business users being more dependent on their services. Providers of intermediation services often have a better negotiating position, which allows them to behave unilaterally in practice in a way that might be in conflict with the legitimate interests of business users and, indirectly, also consumers.

For these reasons, **Regulation (EU) 2019/1150 of the European Parliament and of the Council promoting fairness and transparency for business users of online intermediation services** (hereinafter the “P2B Regulation”) was adopted, coming into effect on **12 July 2020**. The full wording of the Regulation is available here:

<https://eur-lex.europa.eu/legal-content/CS/ALL/?uri=CELEX%3A32019R1150>

In the Czech Republic, the P2B Regulation was implemented by an amendment to **Act No. 480/2004 Coll., on Certain Information Society Services**. Supervision of compliance with the obligations set out in this Regulation was entrusted to the **Czech Telecommunications Office** (hereinafter the “Office” or “CTU”).

It is the responsibility of providers of online platforms and search engines to ensure compliance with legal standards according to the P2B Regulation and other legislation. However, the Office believes that it is important to help providers understand the new obligations under the P2B Regulation and to give them the opportunity to familiarise themselves with the Office’s preliminary interpretation thereof. Nevertheless, it is important to stress that this is non-binding guidance. The circumstances of the individual case will always have to be taken into account in order to assess it. The Office also does not have the authority to decide disputes between providers and their users. Furthermore, it should be noted that the P2B Regulation does not affect compliance with other internal or European legal regulations, such as the DMA<sup>1</sup> and DSA<sup>2</sup> Regulations or legislation on consumer protection, data protection, competition protection or the relevant provisions of the Civil Code.

The European Commission’s answers to other questions concerning the P2B Regulation can be found here: <https://digital-strategy.ec.europa.eu/en/library/qa-platform-business-small-businesses-and-other-online-operators> or you may contact CTU at the email address [podatelna@ctu.cz](mailto:podatelna@ctu.cz).

For the sake of completeness, we would like to add that all the examples given in this guide are for illustrative purposes only. For the purposes of this guide, the examples assume that the providers mentioned in the individual examples are obliged persons within the meaning of the P2B Regulation. However, the actual assessment of the applicability of the P2B Regulation to such providers will always depend on the specific circumstances.

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<sup>1</sup> Regulation (EU) 2022/1925 of the European Parliament and of the Council on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act).

<sup>2</sup> Regulation (EU) 2022/2065 of the European Parliament and of the Council on a single market for digital services and amending Directive 2000/31/EC (Digital Services Act).

## Overview of the main obligations of the providers under the P2B Regulation:



### 1. Rules for contractual terms and conditions

The contractual terms and conditions must be easily available, detailed, transparent and drafted in plain and intelligible language.

The provider must inform about changes to the terms and conditions at least 15 days in advance on a durable medium.



### 2. Visibility of business users

The identity of a business user must be clearly visible on the online platform.



### 3. Procedure for the restriction, suspension and termination of services

The restriction, suspension and termination of intermediation services must be announced to the business user in advance on a durable medium including reasoning and a reference to particular measure of the terms and conditions. Termination of the services must be announced by the provider at least 30 days in advance.



### 4. Ranking offers or search results

The provider must provide in advance a description of the main parameters that determine ranking and explain why those main parameters are relatively significant in relation to other parameters. It must further state how any direct or indirect payment can influence the ranking.



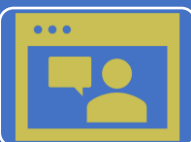
### 5. Transparency in the event of unequal treatment

The provider must give a transparent description of any unequal treatment of offers of goods and services of business users against its own offers or offers of users it controls.



### 6. Restrictions on sales outside the online platform

All restrictions applied to business users must be transparently described in the terms and conditions if they decide to offer the same goods or services outside the provider's online platform.



### 7. Obligation to establish an internal complaint-handling system

Provider must ensure that business users have easy access to mechanism for solving problems related to provision of goods and services. This mechanism must be free of charge.



### 8. Mediation

Provider must identify in terms and conditions two or more mediators with which it is willing to reach an out-of-court dispute resolution.

All providers

Medium and  
Large-sized  
enterprises only

## Who is affected by the obligations under the P2B Regulation?

The Regulation applies to providers of intermediation services (hereinafter “online platforms”) and online search engines if, through these online platforms and search engines, they give business users the opportunity to offer goods or services to consumers located in the European Union, regardless of the place of establishment or residence of the providers of such services.

### Providers of online platforms

The provider of an online platform must comply with the rules set out in the P2B Regulation if it meets **all** the following criteria:

- 1) It offers an information society service, i.e. a service that is usually provided for a fee, remotely, electronically and at the individual request of the recipient of the service;
- 2) It enables business users to offer goods or services to consumers with the aim of facilitating the initiation of direct transactions between these business users and consumers regardless of where these transactions are ultimately concluded. A contract may be concluded both online and offline;
- 3) The services are provided to business users on the basis of a contractual relationship between the provider of these services and the business user which offers goods or services to consumers.

**The provision of services to business users is a key criterion for determining whether the provider is obliged to comply with the rules set out in the P2B Regulation.** In this context, a business user means any natural person acting in the course of a business or profession or any legal person that uses an online platform to offer goods or services to consumers for purposes connected with their trade, business, craft or profession activity.

No minimum threshold is set for the number of business users who must use the online platform in order for the provider to be required to fulfil the obligations under the P2B Regulation. Therefore, the Regulation also applies to online platforms that have only a few business users, as well as to platforms that offer their services directly to consumers in addition to business users.

From the perspective of CTU, examples of online platforms to which the P2B Regulation applies include:

- online marketplaces where businesses offer their goods or services, such as food, accommodation, advertising, tickets to social events, clothing or furniture;
- internet comparison sites, for example comparison sites for energy providers, insurance, plane tickets or prices of goods;
- online reservation platforms for restaurants, hairdressers or doctors;
- distribution platform services, such as stores selling mobile apps, software, films or computer games;
- music, video and other creative content sharing services;
- online social networking services where business users offer goods and services.

### Providers of online search engines

Online search engines can significantly affect the economic results of businesses that offer their goods or services to consumers through their websites.

The provider of an online search engine is the one who offers a digital service that allows users to input queries in order to perform searches of, in principle, all websites, or all websites in a particular language. The input query may be on any subject in the form of a keyword, voice request, phrase or

other input. The result of the query may be provided in any format in which information related to the requested content can be found.

### **Exceptions**

The P2B Regulation does not apply to providers of the following services:

- peer-to-peer (person to person) 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;
- online search engine optimisation services or ad-blocking services;
- technological functionalities and interfaces that merely connect hardware and applications (for example mobile operating systems);
- online payment services.

## **1 Rules for contractual terms and conditions**

Providers of online platforms are required to bring their contractual terms and conditions into compliance with Articles 3, 8 and 9 of the P2B Regulation. This section does not apply to providers of online search engines.

Transparent terms and conditions create a predictable environment for business users allowing them to obtain the information necessary for deciding whether and in what way they want to use the online platform. Transparency requirements also protect business users against unpredictable behaviour of providers of online platforms during the contractual relationship. This helps to ensure a fair and reliable online business environment. The degree of transparency can also be a parameter by which providers of online platforms can differentiate themselves in terms of user-friendliness.

### **What requirements do the contractual terms and conditions have to meet under the P2B Regulation?**

The P2B Regulation sets out the requirements for the form, content and availability of the terms and conditions for business users. CTU notes that this does not affect any obligation to have special terms and conditions, for example for consumers.

#### **Form**

The contractual terms and conditions must be drafted in a plain and intelligible language. This means, in the view of CTU, that they should be labelled as contractual or general terms and conditions and, furthermore, should describe the rights and obligations arising from the contractual relationship in a specific, detailed and clear manner and should provide business users with a reasonable degree of predictability. At the same time, they should not be written in a misleading manner. Business users should obtain information from the terms and conditions on how the provider will behave in specific situations, should they occur, in order to understand why it is treating them in a particular way in a specific situation. The language of the terms and conditions should be intelligible, particularly for business users established in the Czech Republic.

In the opinion of CTU, the terms and conditions can be presented in various ways, for example with a link to a file that can be downloaded or directly on a website. The terms and conditions can be further supplemented by other guides, manuals, answers to frequently asked questions, illustrative videos, etc.

However, the more fragmented the information is, the less clear and intelligible it will be for business users. If the terms and conditions consist of several parts, they should refer to each other and contain a list of all the parts.

**Availability**

The valid contractual terms and conditions should be easily available to business users via the internet at all stages of the business relationship. This means, among other things, that a business user or potential business user must be able to familiarise themselves with the terms and conditions prior to concluding a contractual relationship with the provider without having to log in or register.

The location of the terms and conditions should be predictable. If a provider places its terms and conditions or part thereof on the internet in such a way that business users must click several times in a complicated way to get to them, this could mean that they are not easily available, but this does not necessarily mean that the terms and conditions should be on the homepage.

**Content**

The P2B Regulation explicitly states that the content of the terms and conditions must be:

- grounds for a decision to suspend, terminate or in any other way restrict in full or in part the provision of online intermediation services to business users;
- information about any additional distribution channels and potential affiliated programmes through which providers of online intermediation services can place goods and services offered by business users on the market;
- information about the effect of the contractual terms and conditions on the intellectual property rights of business users and their control over these rights;
- information about the terms under which business users may terminate their contractual relationship with the provider of online intermediation services;
- a description of the type of additional goods and services offered and a description of whether and under what circumstances a business user may offer its own additional goods and services through the online intermediation services;
- a description of the technical and contractual access to information which is also kept after the termination of the contract, or a statement that such technical and contractual access does not exist. (This refers to data generated or provided by business users when using an online platform.)

Furthermore, business users should be informed in the terms and conditions about which personal or other data provided by business users or consumers for the purposes of using online platforms or which are generated during the provision of these services they have access to, or the provider must state that no such access exists. This refers, for example, to reviews, statistics or data about consumers or information about whether data is transmitted to third parties. This procedure does not affect compliance with GDPR.

**Changes**

Any changes to the terms and conditions must be notified to business users and provided on a **durable medium**. The term “changes” does not include editorial alterations, unless they change the content or meaning of the contractual terms and conditions.

Business users must be notified of proposed changes **at least 15 days in advance**. In addition, this period must be appropriate to the nature and extent of the intended changes

**Durable medium**

is any tool that enables business users to store information addressed to them personally in a manner suitable for its future use and allows the reproduction of stored information in an unchanged state, for example e-mail.

and their consequences for the business user concerned. If business users are required to make technical or commercial changes, they must be announced within a reasonably longer period in order for the change or changes to be made. The business user has the right to terminate the contract before the end of this period. The business user may request that the termination takes effect within 15 days of receiving notification of the change.

**Example 1:** An entrepreneur is planning to recruit new employees and for this purpose visits the website of an online platform, through which vacancies can be advertised. However, he could not find any contractual terms and conditions on their website. The entrepreneur therefore contacted the platform's call centre where he was informed that he had to return to the homepage, select the "Services" tab, then the "Extended Business Information" tab, scroll down to the end of the page and click on the "Files to download" link where he can then download the general terms and conditions.

**Explanation:** Contractual terms and conditions made available in this way are not easily accessible as the entrepreneur had to click through to them in a complicated way and the location of the terms and conditions was overall unintuitive.

**Example 2:** An entrepreneur who runs a guesthouse wants to attract new guests and so he decides to offer his services through a booking platform. Therefore, he visits the platform's website to study its contractual terms and conditions and to be able to compare its services with competing platforms. However, he cannot find the terms and conditions and only reads in the "Information for users" that the terms and conditions will be sent to him by e-mail after he has created a customer account.

**Explanation:** Terms and conditions made available in this way are not easily accessible as access to them requires creating a customer account. In addition, the valid terms and conditions must be available continuously and not only once a contract is concluded.

**Example 3:** The provider of online platform XY decides to begin offering a new additional service and therefore changes its contractual terms and conditions. Business users of online platform XY are informed about this step on its Facebook profile with the statement: *"Dear users, with effect from the date XX new general terms and conditions will come into effect, the text of which you can find on our website."*

**Explanation:** In this case the provider has breached several obligations at once. Users were notified of the changes in an unaddressed manner and they were not on a durable medium. It is also not clear from the notification what specific changes to the general terms and conditions will occur.

## 2 Visibility of business users

Under Article 3(5) of the P2B Regulation, the provider of an online platform shall ensure that the identity of the business user offering the goods or services through its services is clearly visible. This section does not apply to providers of online search engines.

The transparent display of identity enables an entrepreneur to build his own brand and strengthen his position with regard to the provider, as well as leading to better consumer orientation on the market. **According to CTU, clearly visible identity means a display that allows the consumer to easily distinguish whether it is a direct offer from the provider of the online platform or an intermediated offer from the business user.** At the very minimum, the company name or the entrepreneur's full name should be visible. However, this obligation should not be understood as a right on the part of

business users to unilaterally determine how their offer will be presented. Other obligations may be set out in the DSA Regulation.

**Example 4:** As part of the expansion of its offer the provider of an online e-shop has launched a partner sales option for business users which will enable these users to offer their goods directly on the provider's e-shop. The provider transparently declares this form of sale in its general terms and conditions. The status "partner sale" is displayed when the customer clicks on a specific offer of goods. No other identification of the business user is available.

**Explanation:** The provider provides business users with a sales intermediation service, i.e. an e-shop with one seller also partly becomes a platform (often for example called a Marketplace), on which other entities sell their services or products. The provider is therefore required to allow the identity of business users to be displayed for specific goods. Merely distinguishing between own and partner goods is not sufficient and the provider therefore breached the P2B Regulation.

### 3 Procedure for the restriction, suspension and termination of services

The rules on the restriction, suspension and termination of intermediation services by the provider of an online platform are set out in Article 3(1)(c), Article 4 and Article 8(c) of the P2B Regulation. This section does not apply to providers of online search engines.

If the provider of an online platform decides to restrict, suspend or terminate the provision of its services to a business user, this may have serious consequences for the user concerned because the online platform may contribute significantly to the creation of its revenue. Therefore, the reasons for the restriction, suspension and termination of services must be defined in advance for business users in the contractual terms and conditions so that they can foresee the behaviour which may lead the provider to take one of these measures.

Any restriction, suspension or termination of services by the provider must meet the following conditions:

- 1) The measure must be made available to the business user concerned;
- 2) It must be based on a specific provision of the terms and conditions so that business users are aware of it in advance;
- 3) Unless stated otherwise, the business user concerned must be provided with the full justification, including the facts, circumstances or content of third party notifications which led to the measure, as well as the relevant provisions of the terms and conditions on the basis of which the restriction, suspension or termination of services occurred;
- 4) The justification must be recorded on a durable medium;
- 5) The business user concerned must be allowed to challenge the measure via an internal complaint-handling system (see below).

Furthermore, it is important that the reasons for taking a measure are stated clearly and intelligibly. It must be clear to the business user which services it can no longer use. The justification must also be specific and detailed so that business users can cease breaching the terms and conditions.

The provider does not have to give justification for the measure if it is subject to a legal or regulatory obligation not to state specific facts or circumstances, or if it is able to prove that the business user concerned repeatedly breached the applicable terms and conditions, which led to the termination of all services. It is therefore important that the business user is properly informed of previous breaches.



### **Suspension and restriction**

According to the principle of proportionality, CTU believes that, if possible, a provider should first consider suspending or restricting the provision of services and only then proceed to termination. This could include, for example, removing a business user's goods or services from the visible offer or removing them from the search results. The justification for such measure must be given to the business user not later than when the measure comes into effect. However, CTU recommends that the justification for the measure is given to the business user in advance, especially if the suspension or restriction of services would be a precursor to the termination of services.

### **Termination**

The termination of the provision of all services to a business user is the sternest measure that a provider can choose. The measure generally consists of cancelling the user account, which prevents the business user from continuing to offer its goods or services through the online platform. The justification for such measure must be given to the business user **not less than 30 days before it comes into effect**. This time limit does not apply if:

- The provider must fulfil another legal or regulatory obligation that prevents it from complying with the notification deadline;
- The provider is able to prove that the business user concerned repeatedly breached the applicable terms and conditions;
- The provider terminates the provision of the service for an urgent reason under national law that is in accordance with EU law.

The exemptions are mainly aimed at cases of serious forms of illegal or inappropriate content, offers of dangerous goods or forgeries, fraudulent offers, spam, misuse of personal data, termination of business, etc. If the provider of an online platform decides to subsequently reassess a decision to restrict, suspend or terminate services (for example, it has found that the original decision was unjustified or that the business user has rectified the problem), it must restore the provision of services for the business user without undue delay.

**Example 5:** A provider operating an online marketplace decides to immediately remove part of a business user's goods from its offer without informing it. The provider has rejected the user's subsequent complaint with the justification that the goods had been on offer for too long and consumers were clearly not interested in them. The provider justified this procedure with Article 24 of its general terms and conditions, according to which it has the right to regularly evaluate the success of the displayed offers.

**Explanation:** The provider of the online platform breached the P2B Regulation as the grounds on which it restricted the services for the business user are described too generally and broadly in its general terms and conditions. At the same time, it is necessary to ensure that the terms and conditions are in accordance with Article 5 of the P2B Regulation; in particular, it is necessary to provide transparent information about the main parameters determining ranking. Furthermore, the provider failed when didn't inform the user about the measure.

**Example 6:** The operator of a price comparison site decides to suspend the provision of services to an electronics e-shop due to a breach of Articles 15 and 22 of the general terms and conditions. It has duly notified the entrepreneur of its decision. In its justification, it has described in detail why it believes that the entrepreneur's behaviour has breached Article 15 of the terms and conditions, including a reference to its wording. Regarding the breach of Article 22, the provider only stated that the breach of Article 15 itself is a sufficient reason to suspend the services and therefore it would not be dealt with further.

**Explanation:** The provider's justification is insufficient because it is incomplete. If the provider restricts the provision of services on multiple grounds, it must address all the relevant grounds in its justification so that the business user can identify by which conduct it has breached the general terms and conditions and, where appropriate, cease this conduct.

**Example 7:** The provider of an online platform wants to suspend the provision of services to a business user due to default in the payment of contractual fees. It makes this decision, including the justification for it available to the business user on the user interface of its website. This message cannot be downloaded or stored in any way.

**Explanation:** The provider of the online platform has breached the P2B Regulation because it has not provided the decision to the business user on a durable medium. The justification must also contain reference to the specific provision of the contractual terms and conditions.

**Example 8:** The provider of an online package holiday platform decides to terminate the provision of services to tour operator ABC and notifies it of its decision 7 days in advance. In its justification, the provider stated that based on an audit it had commissioned, it had become apparent that in the past year, the tour operator had at least ten times offered the same tours as on the online platform on its own website at lower prices which contravenes the valid terms and conditions. This was the first breach of the general terms and conditions that the business user was reprimanded for.

**Explanation:** The provider has not proceeded correctly because the 30-day notice period upon termination of services can be shortened only if the provider is able to prove a repeated breach of the terms and conditions and duly notifies the business user of these breaches. At the same time, the client must be informed in advance of any restriction regarding off-platform sales.

**Example 9:** The provider of an online food delivery platform restricts the provision of certain services to the restaurant XYZ. Repeated delays in handing over food to couriers prompted the provider to take this step. According to the general terms and conditions, the provider was entitled to take this step. The provider duly notified the restaurant of its decision and gave the following justification: *"Dear user, due to a repeated breach of the contractual terms and conditions, as of the date XY we are suspending the provision of the following services to you..."* No other justification was given.

**Explanation:** The justification sent by the provider is not sufficiently specific or detailed. It is not clear from it what misconduct the business has committed, nor is there any reference to a specific breached provision of the general terms and conditions.

#### 4 Ranking offers or search results

The provider of an online platform or search engine that uses ranking to present goods, services or search results is required to act in accordance with Article 5 of the P2B Regulation. **Ranking means the relative importance attributed to goods or services offered or the relevance attributed to online search engine results**, regardless of the technical means used for such presentation, arrangement or communication.

Ranking goods or services or search results has a big influence on consumers' decision-making, and therefore also on businesses' success. Success depends more and more on the visibility and traceability of what is on offer on the internet. Publication of the ranking methods used by providers enables business users to familiarise themselves in advance with the criteria for ranking within other offers or websites and they can take steps to achieve better results on their basis.

### European Commission guidelines

The European Commission has published guidelines for providers containing practical advice on the application of ranking rules, including examples of the main parameters, which are available here: [https://eur-lex.europa.eu/legal-content/CS/TXT/?uri=CELEX:52020XC1208\(01\)](https://eur-lex.europa.eu/legal-content/CS/TXT/?uri=CELEX:52020XC1208(01))

In the CTU's opinion, it is especially important that the ranking is predictable. **Predictability means that providers do not determine the ranking arbitrarily, but according to previously set rules.**

**The provider of an online platform** must provide in advance a description of the main parameters that determine ranking and explain why those main parameters are relatively significant in relation to other parameters. This description must be part of

the provider's contractual terms and conditions. It must be easily available and drafted in plain and intelligible language.

**The provider of an online search engine** sets out the main parameters, which are individually or all together the most significant in determining ranking and the relative significance of those main parameters, by providing an easily and publicly available description on its online search engine, drafted in a plain and intelligible language. This description shall be kept up to date. Parts of a website that require users to log in or register are not considered easily and publicly available.

In any case, providers of an online platform or search engine are required to disclose in advance:

- 1) a description of the main parameters determining ranking. In addition, providers of online platforms must state the relative significance of those parameters in relation to other parameters;
- 2) a description of the possibilities to influence the main parameters through any direct or indirect payment by business users or corporate website users. The provider shall also set out a description of the effects of such payment on ranking.

Main parameters include general criteria, processes, algorithms or other mechanisms used in connection with the ranking. These could be, for example, indicators used to measure the quality of goods or services of business users (e.g. consumer ratings), the use of editors and their ability to influence the ranking of goods or services (e.g. "best sellers"), the amount of payment, or elements that are unrelated or only remotely related to the goods or services themselves, such as presentation elements of the online offer (e.g. how they are displayed on users' devices). An extensive list of examples of ranking parameters is contained in Annex I of the European Commission's guidelines containing practical advice on the application of ranking rules, available under the link above.

### Payment

Payment means such a payment which main or sole purpose is to achieve a better ranking as well as indirect payment consisting of the business user accepting any other commitments the practical effect of which is achieving a better ranking, for example the use of additional services or premium features.

The description of the main parameters must allow business users or corporate website users to obtain an adequate understanding of the ranking mechanism. The description must contain at least:

- how the ranking mechanism takes into account the characteristics of the goods or services offered to consumers by the entrepreneur or corporate website user;
- how it takes into account the relevance of those characteristics for consumers who use a particular online platform or search engine;

- regarding online search engines, the extent to which the provider takes into account the design characteristics of the website used by corporate website users.

The provider's commercial interests, trade secrets, confidential information and intellectual property rights are generally not a reason for not making the main ranking parameters available. **Providers of online platforms or search engines nevertheless are not obliged to disclose detailed information about the functioning of their ranking mechanism, including algorithms.** Similarly, the P2B Regulation does not restrict providers from taking action against manipulation of ranking results which could reasonably be expected to mislead or harm consumers.

Given the absence of a contractual relationship between the parties concerned, providers of online search engines cannot be expected to directly inform corporate website users of a change in ranking or removal as a consequence of third-party notification. However, a corporate website user should have the right in a specific case to verify the content of a third-party notification that led to a change in ranking or removal, and to examine the contents of the notification.

## 5 Transparency in the event of unequal treatment

The provider of an online platform or search engine that applies any differentiated treatment – on the one hand, between its offers of goods and services or the offers of business users controlled by this provider and, on the other hand, offers of other (non-controlled) business users – shall be required to comply with the rules set out in Article 7 of the P2B Regulation.

The provider of an online platform or search engine may itself offer certain goods and services that directly compete with other businesses or corporate website users that use the online platform or search engine, which may motivate the provider to favour its own offers or the offers of the persons it controls. However, it should be stressed that the obligations set out in the P2B Regulation do not affect a substantive assessment of whether specific differentiated treatment is legal according to other legal regulations, in particular according to the DMA Regulation which prohibits unequal treatment by “gatekeepers”, or according to applicable competition law. **The P2B Regulation merely states that if a provider applies unequal treatment, it must do so transparently.**

The provider of an online platform or search engine must give a description of any unequal treatment that it applies or may apply. The provider of an online platform must include this description in its contractual terms and conditions. The provider of an online search engine shall do the same in a publicly accessible manner. In addition, in the description, the provider of an online platform shall also include the main economic, commercial or legal aspects of differentiated treatment.

By way of illustration, the P2B Regulation mentions four examples of unequal treatment:

1. access to data provided by businesses or consumers to online platforms and search engines or which are generated during the provision of these services;
2. the ranking or other settings applied by the provider that influence consumer access to goods or services;
3. any direct or indirect payment charged for the use of the provider's services;
4. access to, conditions for, or any direct or indirect payment charged for the use of services, functionalities or technical interfaces that are directly connected or ancillary to the services provided.

The description of differentiated treatment must be clear and intelligible and should ideally be part of the contractual terms and conditions. It must be clear to businesses what form of unequal treatment

may be applied by the provider and for what reason. A specific and detailed description of any unequal treatment must also be provided. Finally, the description of unequal treatments should be complete, i.e. it should include all unequal treatment that the provider of an online platform or search engine applies or may apply. Merely giving a few examples is insufficient in the view of CTU.

**Example 10:** The provider of an online platform for cultural events regularly collects data on traffic and the popularity of offers and subsequently uses this information to better target its own events offered through the same platform. There is no mention of this practice in the general terms and conditions.

**Explanation:** The provider has made a mistake. If it uses the data obtained from the operation of the platform to improve its own services which it then uses to compete with other business users, it must transparently state in its terms and condition which data the businesses, unlike itself, do not have access to and for what reason.

**Example 11:** The provider of an online platform that provides package holiday intermediation services charges commission for each offer issued by business users. At the same time, the provider operates a travel agency within its subsidiary which, however, does not have to pay any commission. There is no mention of this in the provider's general terms and conditions.

**Explanation:** If a provider gives any price advantage to any person that it controls compared to other business users, it must mention this fact in its terms and conditions, together with the justification for doing so.

**Example 12:** The provider of an online platform for the sale of furniture and home furnishings offers a secure online card payment option with a money-back guarantee for goods sold under the brand of a person it controls, whereas for other business users it only allows normal online payment by card. In the general terms and conditions, the provider only states that a business has the option to choose online payment by card, bank transfer or cash on delivery as the payment method.

**Explanation:** The provider is breaching the obligations according to the P2B Regulation by not transparently informing business users in the general terms and conditions about the unequal treatment regarding payment options. Similarly, it has not given the reasons for this unequal treatment.

## 6 Restrictions on sales outside the online platform

If the provider of an online platform imposes restrictions on business users to offer the same goods and services outside its online platform, it shall be subject to the obligations under Article 10 of the P2B Regulation. This section does not apply to providers of online search engines.

Business users may sell goods or services to consumers through multiple sales channels, including their own websites. With regard to this, a business may decide, for example, to apply different terms and conditions or prices on different sales channels. **If the provider of an online platform decides to prevent business users from applying more favourable conditions on sales channels other than the platform it operates, business users need to be transparently informed about this.** CTU gives the parity clause as an example of such a restriction. Such a clause prevents business users from offering the same goods or service under better terms and conditions on its own website (narrow parity clause) or on any other sales channel (broad parity clause).

The above restrictions must be contained in the provider’s contractual terms and conditions. Together with the restrictions, the provider shall also give the reasons that led it to take this step, including their main economic, commercial or legal aspects. It must be clear to business users which restrictions are imposed on them to offer goods and services through other sales channels and why these restrictions are imposed. The restrictions must be described in clear and intelligible language and must be specific and detailed. Unlike other obligations under the P2B Regulation, the description must be easily available not only to all business users but also to the general public.

**CTU points out that the application of obligations arising from the P2B Regulation does not affect the application of special legal regulations regarding the legality of imposing restrictive clauses.** The use of broad parity clauses is prohibited in Article 5(1)(d) of Commission Regulation (EU) 2022/720 on the Application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements. Therefore, the provider of an online platform may not restrict business users from offering goods or services under more favourable conditions on other online platforms. Caution is also warranted in the use of a narrow parity clause which may contravene the Competition Act if such clause would have noticeable negative effects which would or could lead to disruption of competition in the relevant markets. For online platforms designated as “gatekeepers” in the DMA Regulation, there is an unconditional prohibition to impose both narrow and broad parity clauses.

## 7 Obligation to establish an internal complaint-handling system

Under Article 11 of the P2B Regulation, the provider of an online platform that **is not a small enterprise** is required to set up an internal system for handling the complaints of business users. This section does not apply to providers of online search engines.

The purpose of the internal complaint-handling system is to **ensure that businesses have access to immediate and effective means of redress if they need to clarify disputed facts or challenge a provider’s decision.** The internal complaint-handling system must be easily accessible and free of charge for business users, for example as part of the user interface. Complaints should be handled within a reasonable time frame according to their importance and complexity. All relevant information

### Small enterprises

are defined in the Annex to Commission Recommendation 2003/361/EC as enterprises that employ fewer than **50 persons** and whose annual turnover or annual balance sheet total does not exceed **10 million euros**. The European Commission has issued a user guide to define small and medium-sized enterprises which is available here:

<https://op.europa.eu/cs/publication-detail/-/publication/756d9260-ee54-11ea-991b-01aa75ed71a1>

on access to the internal complaint-handling system and how it works must be stated transparently by the provider in its contractual terms and conditions. The provider shall also ensure equal treatment in the same situations. The system should be available to all business users, including those for whom the provision of services has been restricted, suspended or terminated. In CTU’s opinion, the use of the word “internal” should not be understood as preventing the handling of a complaint from being transferred to an external provider. Also, it does not exclude a certain degree of use of automated procedures provided that the internal system continues to meet the requirements under Article 11 of the P2B Regulation.

Through the internal complaint-handling system, the provider must allow business users to submit complaints at least concerning:

- non-compliance by the provider with any obligations laid down in the P2B Regulation which affect the complainant;
- technological issues which relate directly to the provision of online intermediation services, and which affect the complainant;
- measures taken by, or behaviour of the provider which relate directly to the provision of online intermediation services, and which affect the complainant.

The provider shall properly assess complaints that are submitted and take any follow-up measures that are necessary. According to CTU, during the handling of a complaint, the provider of an online platform may keep valid an earlier decision. The result of the complaint-handling process must be communicated to the complainant in a personalised manner in a clear and intelligible language.

At least once a year, providers shall disclose and make easily available to the public information about the functioning and effectiveness of their internal complaint-handling system. The information shall include, in particular, the total number of submitted complaints, the main types of complaints, the average time period needed to process the complaints and aggregated information regarding the outcome of the complaints. The purpose of this obligation is to make business users aware of the most common problems that may occur during the provision of services. Article 20 of the DSA Regulation imposes further obligations on providers.

## 8 Mediation

The provider of an online platform that is **not a small enterprise** within the meaning of the Annex to Commission Recommendation 2003/361/EC, shall, in accordance with Article 12 of the P2B Regulation, **identify in its terms and conditions two or more mediators** with which it is willing to engage on the out-of-court dispute resolution with business users which may arise in relation to the provision of online intermediation services. This section does not apply to providers of online search engines.

The identified mediators may be public or private entities and must meet the following requirements:

1. they are impartial and independent;
2. their services are affordable for business users;
3. they can provide their services in the language of the terms and conditions which govern the contractual relationship between the provider and the business user;
4. they are easily accessible either physically in the place of establishment or residence of the business user, or remotely using communication technologies;
5. they can provide their services without undue delay;
6. they have a sufficient understanding of general business-to-business commercial relations.

The purpose of identifying a minimum number of mediators is to strengthen their neutrality. However, in the event of a dispute, the provider may also agree with the business user to select any other mediator. In any case, providers of online intermediation services shall bear a proportionate share of the total mediation costs. Furthermore, the principle applies that **mediation is voluntary** and its initiation shall not affect the possibility of claiming rights by other means.

## Penalties for infringement

Under Section 11(3) and (4) of Act No. 480/2004 Coll., on Certain Information Society Services, a breach of the obligations set out in the P2B Regulation is an administrative infraction, which is punishable by a **fine of up to CZK 10,000,000**. In addition to a monetary penalty, the Office may also decide to **publish its decision** on the administrative infraction.

**In the event of a less serious infringement, the Office shall first warn the provider** that it is acting in breach of the P2B Regulation and ask it to rectify the situation. The Office shall provide a time period of at least 15 days to redress the deficiencies. The degree of severity of the infringement shall be assessed by CTU according to the circumstances of the specific case, for example, according to the extent and significance of the harmful effect, the duration of the unlawful conduct or the way it was committed.