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INFORMATION, COMMUNICATION AND TECHNOLOGY

P2B REGULATION

On 12 of July, an important regulation which sets new rules in the context of e-commerce entered into force: the [Regulation on Promoting Fairness and Transparency for Business Users of Online Intermediation Services \(Regulation \(EU\) 2019/1150 of the European Parliament and of the Council of 20 June 2019\) \("P2B Regulation"\)](#). The main objective of the P2B Regulation is to create greater trust and confidence in e-commerce by laying down rules applicable to business relationships between (i) entities providing online intermediation services (OISPs) to business users and (ii) entities providing online search engines (OSEs) to users of corporate websites. All OISPs and OSEs, regardless of place of establishment or residence, are covered by the P2B Regulation provided that business users have a place of establishment or residence in the European Union (EU) or offer their goods or services to consumers located in the EU.

OISPs will necessarily have to revisit the terms and conditions of services (T&C) and their contractual process, as under the P2B Regulation, they are obliged to ensure that such T&C are intelligible and easily accessible throughout the entire business relationship (including at the pre-contractual stage). In addition, the T&C will be required to contain, among other things, information that allows business users to know: (i) the sites or applications where their products and services are marketed and for whom they are intended; (ii) the possible impacts on their property rights (for example, information regarding the rights of OISPs in relation to the use of brands or logos); (iii) whether different treatment is given to their products/services or to third parties; (iv) the conditions of access and use of certain categories of data (personal and non-personal), in particular, any sharing of OISPs data with third parties that occurs for purposes not necessary for the proper functioning of online brokerage services; for example, if the provider uses such data for profit.

It is also mandatory for OISPs to provide an internal procedure for examining complaints and an obligation to notify the complainant of the steps taken, unless the OISP is considered as a small enterprise within the meaning of the Annex to Recommendation 2003/361/EC. New rules are also introduced through this Regulation regarding rules on restriction, suspension and termination of service, in the relationship between OISP and the business user, including the establishment of minimum deadlines.

For its part, the P2B Regulation imposes on OSEs the duty to describe, in a public and up-to-date manner, the main determining parameters for the classification of links (including the possibility of influencing the classification against any direct or indirect remuneration and its effects), as well as a description of any differentiated treatment in relation to the goods or services of the company or its group or by other Internet users.

Below, find a table containing the main concepts:

What are online intermediation services?	They constitute information society services, which allow business users to offer goods or services to consumers, with a view to facilitating the initiating of direct transactions between those business users and consumers, irrespective of where those transactions are ultimately concluded and are provided to business users on the basis of contractual relationships between the provider of those services and business users which offer goods or services to consumers.
What is a Business User?	A Business User is any private individual acting in a commercial or professional capacity who, or any legal person which, through online intermediation services offers goods or services to consumers for purposes relating to its trade, business, craft or profession.
What is an Online Search Engine?	It is 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, on the basis of a query on any subject in the form of a keyword, voice request, phrase or other input, and returns results in any format in which information related to the requested content can be found.
What is a Corporate Website User?	A Corporate Website User can be 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.
What is a Consumer?	A consumer can be any natural person who is acting for purposes which are outside this person's trade, business, craft or profession.

In terms of penalties, the P2B Regulation merely states that general contractual clauses which do not comply with the information and communication obligations shall be considered null and void. In the remaining, and although the P2B Regulation is directly applicable in Portugal as of 12 July 2020, there are certain matters which, having been left to the discretion of the Member States, require an enforcement law, such as the legal consequences in the event of a breach of the legal obligations established therein, namely, whether they constitute an administrative offence or a simple civil offence, which may cause differences in the application of the P2B Regulation within the European Union.

To assist in the interpretation and application of the Regulation, see Q & A of the European Commission and available [here](#).