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Model Rules on Online Platforms

Report of the European Law Institute





**Report
of the European Law Institute**

Model Rules on Online Platforms

The European Law Institute

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¹ We apologize if anyone who attended one of the project meetings is not listed here by mistake. If this is the case, please send a note so that we can take this into account in the final publication.

Reporters' Preface

I. Overview

The rise of online platforms is one of the fundamental economic and societal developments of recent years. The rapid growth of the 'platform economy' has triggered a debate over whether the regulatory framework has to be adjusted in order to adequately reflect the changing market structure. In particular, the recalibration of rights and duties in the triangle between suppliers, customers and platform operators is currently being discussed. Recently, the first steps towards a regulatory framework for the platform economy have been taken at European and national level. However, regulation remains fragmented and sometimes inconsistent.

Against this background, the ELI Project Team has drawn up a set of Model Rules that is meant as a contribution to the ongoing debate and provides a 'visualisation' of how a balanced approach could look, if regulatory action is considered necessary. It goes without saying that the ELI Model Rules cannot address all possible legal aspects of the platform economy. More precisely, these rules only deal with one core aspect of online platforms: the relationship between platform operators and platform users. What are the duties of platform operators towards platform users? In which cases may operators be liable towards users? What are the minimum requirements regarding fairness and the transparency of platforms? How should reputation systems for the collection of customer reviews be designed? Should there be a right to the portability of 'reputational capital'?

With regard to these questions, the ELI Model Rules not only aim to consolidate existing European and national legislation, but also provide some innovative solutions for issues that could be addressed in forthcoming regulatory initiatives, in particular platform liability and reputation systems. These rules draw inspiration from European and national legislation, recent case law as well as other regulatory instruments such as international standards.

The ELI Model Rules are based on the premise that the existing rules of competition law are necessary, but not sufficient for ensuring fairness in the digital economy. These rules, which are applicable independently of any threshold regarding market power, are meant to complement antitrust rules. From this perspective, the ELI Model Rules could provide a source of inspiration for European and national legislators or industry self-regulation.

II. Development of the Project

Readers may know that this ELI project is an 'adopted project'. The starting point was a 'Discussion Draft of a Directive on Online Intermediary Platforms', which was drawn up by a Research Group on the Law of Digital Services in 2015 and 2016. In 2016, the ELI Council discussed adopting the project idea and further developing it into an ELI project. With Council Decision 2016/6, the Council finally decided to set up the current ELI project on 'Model Rules on Online Platforms'. Earlier versions of the draft were presented at ELI Annual Conferences in 2017, 2018 and 2019.

The draft presented now reflects suggestions made, among others, at the 2019 Annual Conference in Vienna as well as during an MCC meeting in Riga in 2018. The February Council 2019 and the Advisors delivered further valuable input. The draft came under intense discussion with some of the Advisors and members of the MCC, as well as stakeholders from leading platform operators, in a two-day meeting in Brussels in June 2019. The contributions of the Assessors, Marta Infantino and Damjan Možina, deserve special appreciation. Their suggestions were particularly valuable for the coherence

of the draft. In the months since, the Reporters implemented the many suggestions and the advice provided by the ELI Council, Advisors and Assessors.

As it stands now, the draft is the result of many great contributions, above all, of course, by the members of the Project Team and participants at the numerous project meetings, which are impossible to appreciate in detail. The Reporters had the privilege of moderating the many discussions and formulating their outcome. The output, the draft now presented, is clearly the result of a common effort.

III. Further Readings on the ELI Project

Christoph Busch; Hans Schulte-Nölke; Aneta Wiewiórowska-Domagalska; Fryderyk Zoll, *The Rise of the Platform Economy: A New Challenge for EU Consumer Law?*, 5 *Journal of European Consumer and Market Law*, 164–169 (2016), available at <https://ssrn.com/abstract=2754100>

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Christoph Busch, *European Model Rules for Online Intermediary Platforms*, in: Uwe Blaurock; Martin Schmidt-Kessel; Katharina Erler (eds) *Plattformen: Geschäftsmodelle und Verträge*, Nomos: Baden-Baden 2018, pp 37–57.

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Felix Maultzsch, *Contractual Liability of Online Platform Operators: European Proposals and Established Principles*, 14 *European Review of Contract Law* 209–240 (2018), available at <https://ssrn.com/abstract=3074301>

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Marie Jull Sørensen, *Draft Model Rules on Online Intermediary Platforms*, in: Bram Devolder (ed) *The Platform Economy: Unravelling the Legal Status of Online Intermediaries*, Intersentia: Cambridge 2019, pp 173–186.

Aneta Wiewiórowska-Domagalska, *Online Platforms: How to Adapt Regulatory Framework to the Digital Age?*, European Parliament Briefing, PE 607.323, 2017, available at [http://www.europarl.europa.eu/RegData/etudes/BRIE/2017/607323/IPOL_BRI\(2017\)607323_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2017/607323/IPOL_BRI(2017)607323_EN.pdf)

Fryderyk Zoll, *Le projet académique pour une directive relative aux plateformes en ligne – la question de la responsabilité des opérateurs de plateforme pour inexécution du contrat par les fournisseurs*, in: Juliette Sénéchal; Sophie Stalla-Bourdillon (eds) *Rôle et responsabilité des opérateurs de la plateforme en ligne: Approche(s) transversale(s) ou approches sectorielles?*, IRJS: Paris 2018, pp 107–116.

Translations of the Discussion Draft (2016) in several languages are available at:
https://www.elsi.uni-osnabrueck.de/projekte/model_rules_on_online_intermediary_platforms.html

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List of Sources

EU Legislation

P2B Regulation (EU) 2019/1150

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Directive (EU) 2019/771 on Contracts for the Sale of Goods

Directive (EU) 2019/771 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the sale of goods, amending Regulation (EU) 2017/2394 and Directive 2009/22/EC, and repealing Directive 1999/44/EC, *OJ L 136*, 22.5.2019, p 28–50

Digital Content Directive (EU) 2019/770

Directive (EU) 2019/770 of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the supply of digital content and digital services, *OJ L 136*, 22.5.2019, p 1–27

General Data Protection Regulation (EU) 2016/679

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, *OJ L 119*, 4.5.2016, p 1–88

Payment Services Directive (EU) 2015/2366

Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC, *OJ L 337*, 23.12.2015, p 35–127

Package Travel Directive (EU) 2015/2303

Directive (EU) 2015/2302 of the European Parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements, amending Regulation (EC) No 2006/2004 and Directive 2011/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC, *OJ L 326*, 11.12.2015, p 1–33

Consumer Rights Directive 2011/83/EU

Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council, *OJ L 304*, 22.11.2011, p 64–88

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Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees, *OJ L 171, 7.7.1999, p 12–16*

Unfair Contract Terms Directive 93/13/EEC

Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, *OJ L 95, 21.4.1993, p 29–34*

Commercial Agents Directive 86/653/EEC

Council Directive 86/653/EEC of 18 December 1986 on the coordination of the laws of the Member States relating to self-employed commercial agents, *OJ L 382, 31.12.1986, p 17–21*

National Legislation

Bürgerliches Gesetzbuch (BGB)

German Civil Code in the version promulgated on 2 January 2001 (Federal Law Gazette I p 42, 2909; 2003 I p 738), last amended by Article 7 of the Act of 31.1.2019 (Federal Law Gazette I p 3719)

Code de la Consommation

Code de la consommation Loi N° 93–949 du 26 juillet 1993, relative au code de la consommation (partie législative), Journal officiel de la République française of 27 July 1993, 10538 (Consumer Code, France), last amended by Article 1 and 3 of the Act of 17 July 2019 (Ordonnance n° 2019-740 du 17 juillet 2019 relative aux sanctions civiles applicables en cas de défaut ou d'erreur du taux effectif global, Journal officiel de la République française of 18 July 2019, 0165)

EU Legislative Materials

New Deal for Consumers 2019

European Parliament legislative resolution of 17 April 2019 on the proposal for a directive of the European Parliament and of the Council amending Council Directive 93/13/EEC of 5 April 1993, Directive 98/6/EC of the European Parliament and of the Council, Directive 2005/29/EC of the European Parliament and of the Council and Directive 2011/83/EU of the European Parliament and of the Council as regards better enforcement and modernisation of EU consumer protection rules

(COM(2018) 185 final) [The Council adopted this Directive on 8 November 2019; publication in the OJ is still pending]

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Proposal for a Directive of the European Parliament and of the Council on consumer rights, COM(2008) 614 final

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Oberdorf v Amazon, Third Circuit Court of Appeals, No 18-1041, 7/3/19

United States Third Circuit Court of Appeals, No 18-1041, *Oberdorf v Amazon.com Inc*, 7.3.2019

ISO Standards

ISO 20488:2018 (Online Consumer Reviews)

ISO 20488:2018, Online customer reviews – Principles and requirements for their collection, moderation and publication

ELI Model Rules on Online Platforms – Black Letter Rules

Chapter I: Scope and Definitions

Article 1: Purpose and Scope

1. The purpose of these Model Rules is to provide a set of rules that contribute to fairness and transparency in the relations between platform operators and platform users. They may serve as a model for national, European and international legislators as well as a source of inspiration for self-regulation and standardisation.
2. These rules are intended to be used in relation to platforms which:
 - a) enable customers to conclude contracts for the supply of goods, services or digital content with suppliers within a digital environment controlled by the platform operator;
 - b) enable suppliers to place advertisements within a digital environment controlled by the platform operator which can be browsed by customers in order to contact suppliers and to conclude a contract outside the platform;
 - c) offer comparisons or other advisory services to customers which identify relevant suppliers of goods, services or digital content and which direct customers to those suppliers' websites or provide contact details; or
 - d) enable platform users to provide reviews regarding suppliers, customers, goods, services or digital content offered by suppliers, through a reputation system.
3. These rules are not intended to be used in relation to platforms operated in the exercise of public authority.
4. Provisions for specific sectors, such as financial services, including insurance, or package travel and linked travel arrangements, take precedence to the extent that they deviate from these rules.

Article 2: Definitions

For the purpose of these rules:

- a) 'platform' means an information society service which provides one or more of the services set out in paragraph (2) of Article 1.
- b) 'platform operator' means a trader who operates a platform;
- c) 'customer' means any natural or legal person who uses a platform for searching for or obtaining goods, services or digital content;
- d) 'supplier' means any natural or legal person who uses a platform for marketing goods, services or digital content to customers, or who has been suggested to customers by a platform;

- e) 'supplier-customer contract' means a contract under which goods, services or digital content are to be provided by a supplier to a customer against the payment of a price in money, or any other counter-performance, or in exchange for data;
- f) 'platform-customer contract' means a contract concluded between a platform operator and a customer on the use of a platform;
- g) 'platform-supplier contract' means a contract concluded between a platform operator and a supplier on the use of a platform;
- h) 'consumer' means any natural person who, in contracts covered by these rules, is acting for purposes which are outside his or her trade, business, craft or profession;
- i) 'trader' means any natural person or legal person, irrespective of whether privately or publicly owned, who is acting for purposes relating to its trade, business, craft or profession in relation to contracts covered by these rules;
- j) 'platform user' means a supplier, a customer or a person who provides a review; and
- k) 'reputation system' means any mechanism for collecting and publishing reviews regarding suppliers, customers, goods, services or digital content.

Chapter II: General Obligations of Platform Operators Towards Platform Users

Article 3: Transparency of Information and Contract Terms

Information to be provided under these rules, as well as contract terms, must be clear and presented in a comprehensible manner, and in machine-readable format. Contract terms must be easily available to platform users at all stages of their relationship with the platform operator, including the pre-contractual stage.

Article 4: Transparency of Rankings

1. Platform operators must provide users with easily accessible information about the main parameters determining rankings presented to users as a result of their search query, and the relative importance of these main parameters. This duty is without prejudice to any trade secrets regarding the underlying algorithms. Platform operators are not required to disclose any information which could easily be used to manipulate search results to the detriment of customers.
2. Platform operators must inform users if the result of a search query has been influenced by any remuneration paid by a supplier or any other financial or corporate ties between the platform operator and the supplier.

Article 5: General Requirements for Reputation Systems

1. A platform operator who provides a reputation system on its online platform must provide information about how the relevant information is collected, processed and published as reviews.
2. The reputation system must comply with the requirements of professional diligence.
3. A reputation system is presumed to comply with the requirements of professional diligence if it complies with either:
 - a) voluntary standards adopted by a national, European or an international standardisation organisation, such as ISO 20488:2018 (Online Consumer Reviews); or
 - b) the criteria set out in Article 6.

Article 6: Criteria of Professional Diligence for Reputation Systems

The criteria in the meaning of paragraph (3) (b) of Article 5 are:

- a) The platform operator must take reasonable and proportionate steps to ensure that the review is based on a genuine experience of its object.
- b) If the platform operator claims that reviews are based on a verified transaction, it must ensure that the review originates from a party to that transaction.
- c) If the platform operator knows or ought to know that the author of a review has received any benefit for providing the review, this must be indicated. If the platform operator knows or ought to know that the author of a review has received any benefit for giving the review a specific positive or negative content, the platform operator must ensure that no such review is or remains published.
- d) Reviews may be rejected or removed only for a legitimate reason. The author of the review must be informed without undue delay about the rejection or removal, along with the reasons for such rejection or removal. Platform operators are not required to disclose any information which could easily be used to manipulate the reputation system to the detriment of customers.
- e) Reviews must be published without undue delay.
- f) The order or relative prominence in which reviews are presented by default must not be misleading. Platform operators must provide users with easily accessible information about the main parameters determining the order or relative prominence in which reviews are presented. Reviews must indicate their submission date. Platform users must be able to view reviews in chronological order.
- g) If the reputation system displays reviews for a fixed period of time only, the duration of this period must be indicated to platform users. This period must be reasonable, but not shorter than 12 months.
- h) If individual reviews are combined into a consolidated rating, the calculation method must not lead to misleading results. If the consolidated rating is calculated on the basis of factors other than the numerical average of reviews, the platform operator must inform the platform users about such factors. The total number of reviews on which the consolidated rating is based must be indicated.

If reviews are displayed for a fixed period of time only, reviews which are older than this period must not be used for the calculation of a consolidated rating.

i) The platform operator must provide free-of-charge mechanisms which allow platform users:

aa) to submit a reasoned notification of any abuse;

bb) who have been affected by a review to submit a response, which must be published together with that review without undue delay.

Article 7: Portability of Reviews

1. The platform operator must provide a facility for existing reviews to be directly transferred at least monthly and upon the termination of the platform-user contract to the reputational system of another platform operator in a structured, commonly used and machine-readable format.

2. Before the conclusion of the platform-supplier or the platform-customer contract, the platform operator must provide information about the processes, technical requirements, timeframes and charges that apply in case a platform user wants to transfer reviews to the reputation system of another platform operator.

3. When importing reviews from another platform, the platform operator must verify that these reviews were generated in conformity with the requirements of professional diligence under paragraphs (2) and (3) of Article 5.

4. When displaying reviews imported from another platform, the platform operator must indicate that these reviews were generated on a different platform.

Article 8: Duty to Protect Users

1. The platform operator has no general duty to monitor the activity of platform users.

2. A platform operator who, on obtaining credible evidence of:

a) criminal conduct of a supplier or customer to the detriment of other users; or

b) conduct of a supplier or customer which is likely to cause physical injury, a violation of privacy, infringement of corporeal property, deprivation of liberty or a violation of another similar right to the detriment of another platform user,

fails to take adequate measures for the protection of the platform users, is liable for damage caused to platform users as a result of this failure.

3. Paragraph (2) also applies where the detriment is suffered by another person who stands to benefit from, or to be exposed to risks emanating from the goods, services or digital content to be provided under the supplier-customer contract.

Article 9: Duty to React to Misleading Information Given by Users

1. A platform operator has no duty to monitor information presented by suppliers or customers on the platform, unless provided otherwise by law.
2. If a platform operator receives a notification of misleading information presented by suppliers on the platform, whether about themselves or the goods, services or digital content they are offering, the platform operator must, in cooperation with the supplier, take reasonable steps to have the misleading information rectified, removed or made inaccessible. Platform operators must also take reasonable and proportionate steps to inform customers who have entered into supplier-customer contracts on their platform and who could have been affected by such misleading information.
3. Paragraph (2) applies accordingly to misleading information presented by customers about themselves.

Article 10: Reporting Facilities

The platform operator must provide an openly accessible means of communication for making notifications of conduct under Articles 8 and 9, which also allows for anonymous notifications.

Article 11: Communication via Platform

Where a platform offers facilities for communication between customers and suppliers relating to the conclusion or performance of supplier-customer contracts, the platform operator must forward any such communications without undue delay.

Article 12: Unilateral Changes of the Platform-User Contract

1. A platform operator may unilaterally vary the terms of a platform-user contract, provided the following requirements are met:
 - a) The user is given reasonable notice of this variation on a durable medium at least one month before the variation takes effect; and
 - b) the variation is in accordance with good faith and fair dealing.
2. The platform operator need not observe the notice period in paragraph (1) (a) where the variation is required by a sudden change of the law, or in order to address an imminent cybersecurity risk.
3. With the notice of a variation, the user must receive a copy of the revised terms together with an explanation of what has been changed.
4. The platform user may terminate the platform-user contract on the occasion of changes of terms without having to observe any period of notice which would otherwise apply. The notice under paragraph (1) (a) must inform the user of this right.

Chapter III: Duties of the Platform Operator Towards the Customer

Article 13: Duty to Inform About the Role of the Platform

At the earliest opportunity and directly before the conclusion of the supplier-customer contract, the platform operator must inform the customer, in a prominent manner, that the customer will be entering into a contract with a supplier and not with the platform operator.

Article 14: Duty to Inform About the Supplier

1. Directly before the conclusion of a supplier-customer contract, the platform operator must inform the customer, in a prominent manner, whether the supplier offers its goods, services or digital content as a trader. Where the supplier is not a trader, the platform operator should also inform the customer that consumer law does not apply to the supplier-customer contract.
2. Not later than immediately after the conclusion of a supplier-customer contract, the platform operator must inform the customer about the identity of the supplier, and must enable communication between the supplier and the customer. At the customer's request, the platform operator must disclose the address of the supplier.
3. For the purpose of paragraphs (1) and (2), the platform operator may rely on the information provided to it by the supplier, unless the platform operator knows or ought to know, on the basis of the available data regarding transactions on the platform, that this information is incorrect. Platform operators must take adequate measures to prevent traders from appearing on the platform as non-traders.

Chapter IV: Duties of the Platform Operator Towards the Supplier

Article 15: Duty of the Platform Operator to Inform Suppliers

Before concluding the platform-supplier contract, the platform operator must inform the supplier on a durable medium:

- a) that the supplier will supply goods, services or digital content under contracts with customers, and not with the platform operator;
- b) how the platform-supplier contract can be terminated by the supplier;
- c) how the platform-supplier contract can be terminated by the platform operator;
- d) about fees due to the platform operator, and how they are calculated;
- e) about any payment mechanism which the platform operator provides for supplier-customer contracts; and
- f) about any method of transferring communications between the supplier and its customers.

Article 16: Duty to Provide Facilities for Informing Customers

1. The platform operator must provide the supplier with facilities for fulfilling the supplier's information duties towards the customer.
2. Where the platform-supplier contract does not exclude the supplier from using standard terms for the supplier-customer contract, the platform operator must provide a facility which allows the inclusion of these terms.

Article 17: Termination

1. Either party to a platform-supplier contract may terminate that contract by giving notice to the other. The period of notice for the platform operator is no shorter than 30 days for the first year, 60 days for the second year, and 90 days for the third and subsequent years during which the contractual relationship has lasted. If the platform-supplier contract stipulates a longer notice period for the supplier, that longer period also applies to the notice given by the platform operator. In order to be valid, such a longer notice period must be appropriate.
2. A party may terminate the contract with immediate effect if it has a compelling reason for doing so.
3. The notice under paragraphs (1) or (2) must specify the reasons for termination.

Article 18: Restriction and Suspension

1. The platform operator may suspend the provision of its services to a supplier, or restrict the range of specific goods or services or digital content offered by the supplier, by giving notice to the supplier. The notice must specify the reason for the restriction or suspension.
2. Where a restriction or suspension under paragraph (1) has an effect which is similar to that of the termination of the platform-supplier contract, Article 17 applies with appropriate modifications.

Chapter V: Liability

Article 19: Liability of the Platform Operator for Lack of Transparency

In the case of a violation of Article 13, the customer can exercise the rights and remedies available against the supplier under the supplier-customer contract also against the platform operator.

Article 20: Liability of the Platform Operator with Predominant Influence

1. If the customer can reasonably rely on the platform operator having a predominant influence over the supplier, the customer can exercise the rights and remedies for the non-performance available against the supplier under the supplier-customer contract also against the platform operator.
2. When assessing whether the customer can reasonably rely on the platform operator's predominant influence over the supplier, the following criteria may be considered in particular:

- a) The supplier-customer contract is concluded exclusively through facilities provided on the platform;
- b) The platform operator withholds the identity of the supplier or contact details until after the conclusion of the supplier-customer contract;
- c) The platform operator exclusively uses payment systems which enable the platform operator to withhold payments made by the customer to the supplier;
- d) The terms of the supplier-customer contract are essentially determined by the platform operator;
- e) The price to be paid by the customer is set by the platform operator;
- f) The marketing is focused on the platform operator and not on the suppliers; or
- g) The platform operator promises to monitor the conduct of suppliers and to enforce compliance with its standards beyond what is required by law.

Article 21: Exercise of Rights and Remedies Against the Platform Operator

1. Where Article 19 or Article 20 (1) apply, a customer who is a consumer can exercise against the platform operator all the rights and remedies that would be available against the supplier if the supplier were a business, irrespective of whether the supplier is a business.
2. Where Article 19 or Article 20 (1) apply, if, according to the applicable law, a customer needs to notify the supplier in order to exercise a remedy, then notifying the supplier produces all effects also in relation to the platform operator.

Article 22: Misleading Statements Made by the Platform Operator

If a platform operator makes misleading statements about suppliers or customers, about goods, services or digital content offered by suppliers, or about any other terms of the supplier-customer contract, the platform operator is liable for the damage which this misleading information causes to customers or suppliers.

Article 23: Guarantees

A platform operator is liable for guarantees which it gives about suppliers or customers, or about goods, services or digital content offered by suppliers.

Article 24: Liability for Violation of Other Roles

A platform operator is liable for damage caused to platform users by a violation of Articles 3, 4, 5, 7, 9 paragraphs (2) and (3), 10, 11, 14, 15, 16, 17, 18.

Chapter VI: Redress

Article 25: Right of Redress

1. A platform operator who, under Articles 19 or 20, has become liable towards a customer for:
 - a) a supplier's misleading statements; or
 - b) a supplier's failure to perform the supplier-customer contract,has the right to be indemnified by the supplier.
2. A supplier who has become liable towards a customer because of misleading statements made by the platform operator has the right to be indemnified by the platform operator.

Chapter VII: Final Provisions

Article 26: Mandatory Nature

The parties may not deviate from these rules or vary their effects to the detriment of the platform user.

Article 27: Third-Party Complaint Mechanism

The platform operator must provide a free-of-charge openly accessible complaint mechanism which allows third parties to submit a reasoned notification of any nuisance or damage caused by platform users. Upon receiving such a notification, the platform operator must take reasonable and proportionate steps to prevent future nuisance or damage.

Article 28: Applicable Law

1. The provisions in Articles 3–11 and 27 apply to platforms which provide services as defined in Article 1 to suppliers and customers who have their habitual residence in a state which has adopted these Model Rules.
2. Article 12 and the provisions in Chapters III–V apply to platform-customer contracts and to platform-supplier contracts which are governed by the law of a state which has adopted these Model Rules.
3. The provision in Chapter VI applies to platform-customer contracts and to platform-supplier contracts where the applicable private international law on legal subrogation or multiple debtors invokes the law of a state which has adopted these Model Rules.

ELI Model Rules on Online Platforms with Comments and Sources

Chapter I: Scope and Definitions

Article 1: Purpose and Scope

1. The purpose of these Model Rules is to provide a set of rules that contribute to fairness and transparency in the relations between platform operators and platform users. They may serve as a model for national, European and international legislators as well as a source of inspiration for self-regulation and standardisation.

2. These rules are intended to be used in relation to platforms which:

a) enable customers to conclude contracts for the supply of goods, services or digital content with suppliers within a digital environment controlled by the platform operator;

b) enable suppliers to place advertisements within a digital environment controlled by the platform operator which can be browsed by customers in order to contact suppliers and to conclude a contract outside the platform;

c) offer comparisons or other advisory services to customers which identify relevant suppliers of goods, services or digital content and which direct customers to those suppliers' websites or provide contact details; or

d) enable platform users to provide reviews regarding suppliers, customers, goods, services or digital content offered by suppliers, through a reputation system.

3. These rules are not intended to be used in relation to platforms operated in the exercise of public authority.

4. Provisions for specific sectors, such as financial services, including insurance, or package travel and linked travel arrangements, take precedence to the extent that they deviate from these rules.

Sources:

Article 1 P2B Regulation (EU) 2019/1150; Article 2 (1) (n) Unfair Commercial Practices Directive (as revised under the New Deal for Consumers 2019); Article 2 (17) Consumer Rights Directive (as revised under the New Deal for Consumers 2019); provisions of national law, eg Article L 111-7 Code de la consommation (FR)

Earlier Version:

Article 1 Discussion Draft 2016

Comments:

The scope of these Model Rules is limited to platforms that offer one or more of the four types of services defined in paragraph (2) of this Article. The four services covered are: (a) online-marketplaces where customers can conclude contracts with suppliers; (b) platforms where suppliers can place advertisements allowing customers to contact them; (c) platforms that offer comparison or other advisory services that identify relevant suppliers to customers; or (d) platforms that offer reputation systems that enable platform users to rate or review suppliers, customers or goods, services or digital content offered by suppliers. The commonality of these four services is that they facilitate or influence entry into a contract for goods, services or digital content between a supplier and a customer. These rules only cover cases in which the customer undertakes payment for a good, service or digital content through the exchange of money, any other counter-performance or data in return. Mere search engines, or social network platforms that only enable social communication between its users, do not fall under these rules, as long as they do not also provide one of the four services defined in paragraph (2).

Within this scope, these Model Rules seek to improve the position of platform users in relation to platform operators in two respects. One is to improve the quality of information on goods, services or digital content that users can find on the platform, and to make – in certain specific cases – the platform operator liable for the quality of the goods, services or digital content purchased by customers on the platform, or with the help of one of the services provided by the platform. The other is to prevent abuses of the advantage that the platform has due to its central position between suppliers and customers to the disadvantage of its users, in particular of suppliers.

Other than the recent EU legislation on platforms in the Consumer Rights Directive (as revised under the New Deal for Consumers 2019), the new Unfair Commercial Practices Directive (as revised under the New Deal for Consumers 2019) and the P2B Regulation (EU) 2019/1150, which is limited to platforms that address consumers as customers, these Model Rules also cover B2B marketplaces, ie platforms whose customers are (exclusively or partially) businesses. In some cases, a business may actually be qualified as a supplier (eg seller or service provider), but pretends to be just a platform in the sense of paragraph (1) (a). In such a situation, the customers should be entitled to invoke – along with their rights under a contract of sale or service with that supplier – any rights they would have against that supplier if it actually were a platform operator.

Paragraphs (3) and (4) seek to limit the scope and the effect of these Model Rules in situations where they do not fit, in particular where other, more specific rules should apply. These Model Rules, in particular, do not deal with violations of intellectual property rights.

Article 2: Definitions

For the purpose of these rules:

a) 'platform' means an information society service which provides one or more of the services set out in paragraph (2) of Article 1.

- b) 'platform operator' means a trader who operates a platform;
- c) 'customer' means any natural or legal person who uses a platform for searching for or obtaining goods, services or digital content;
- d) 'supplier' means any natural or legal person who uses a platform for marketing goods, services or digital content to customers, or who has been suggested to customers by a platform;
- e) 'supplier-customer contract' means a contract under which goods, services or digital content are to be provided by a supplier to a customer against the payment of a price in money, or any other counter-performance, or in exchange for data;
- f) 'platform-customer contract' means a contract concluded between a platform operator and a customer on the use of a platform;
- g) 'platform-supplier contract' means a contract concluded between a platform operator and a supplier on the use of a platform;
- h) 'consumer' means any natural person who, in contracts covered by these rules, is acting for purposes which are outside his or her trade, business, craft or profession;
- i) 'trader' means any natural person or legal person, irrespective of whether privately or publicly owned, who is acting for purposes relating to its trade, business, craft or profession in relation to contracts covered by these rules;
- j) 'platform user' means a supplier, a customer or a person who provides a review; and
- k) 'reputation system' means any mechanism for collecting and publishing reviews regarding suppliers, customers, goods, services or digital content.

Sources:

Article 2 P2B Regulation (EU) 2019/1150; Article 2 Unfair Commercial Practices Directive (as revised under the New Deal for Consumers 2019); Article 2 Consumer Rights Directive (as revised under the New Deal for Consumers 2019); provisions of national law, eg Article L 111-7 Code de la consommation (FR)

Earlier Version:

Article 2 Discussion Draft 2016

Comments:

Many of the definitions in Article 2 are mainly of a technical nature in the sense that they disburden the other Articles from repetitions. Some of the definitions also contain important clarifications of the scope of these Model Rules. The definition of 'platform operator' in (b) provides that the Model Rules only apply to platform providers that are traders in the sense of (i). The definition of 'supplier-customer

contract' in (e) clarifies that, under such contracts, the counter-performance need not necessarily be a price in money. The definition also includes a payment in crypto-currencies, barter contracts or an exchange of services. The definitions of 'consumer' and 'trader' in (h) and (i) repeat the corresponding definitions of EU law.

Chapter II: General Obligations of Platform Operators Towards Platform Users

Article 3: Transparency of Information and Contract Terms

Information to be provided under these rules, as well as contract terms, must be clear and presented in a comprehensible manner, and in machine-readable format. Contract terms must be easily available to platform users at all stages of their relationship with the platform operator, including the pre-contractual stage.

Sources:

Article 3 P2B Regulation (EU) 2019/1150; Article 5 (1), 6 (1) Consumer Rights Directive 2011/83/EU; Article 5 Unfair Contract Terms Directive 93/13/EEC

Earlier Version:

Article 5 Discussion Draft 2016

Comments:

The Article formulates a general rule on drafting and presenting information and contract terms that is drawn on the corresponding duties of EU legislation. The requirement of readability by machines has been added to allow for scanning by tools for automated contract analysis. Sentence 2 has been borrowed from Article 3 (1) (b) P2B Regulation (EU) 2019/1150.

Article 4: Transparency of Rankings

1. Platform operators must provide users with easily accessible information about the main parameters determining rankings presented to users as a result of their search query, and the relative importance of these main parameters. This duty is without prejudice to any trade secrets regarding the underlying algorithms. Platform operators are not required to disclose any information which could easily be used to manipulate search results to the detriment of customers.
2. Platform operators must inform users if the result of a search query has been influenced by any remuneration paid by a supplier or any other financial or corporate ties between the platform operator and the supplier.

Sources:

Articles 5, 7 P2B Regulation (EU) 2019/1150; Articles 2 (1) (m), 7 (4a), Annex No 11a Unfair Commercial Practices Directive (as revised under the New Deal for Consumers 2019); Article 6a (1) (a) Consumer Rights Directive (as revised under the New Deal for Consumers 2019)

Earlier Version:

Article 6 Discussion Draft 2016

Comments:

Paragraph (1) combines and reformulates the provisions on rankings in the recent EU legislation. The rule, however, is more general than the EU legislation, because it sets an obligation to inform on the 'relative importance' of the main parameters (instead of only setting a requirement to give the reasons for the relative importance of the main parameters, as opposed to other parameters as in Article 5 (1) P2B Regulation (EU) 2019/1150). Paragraph (1) also does not specify when and where the information must be given. Such requirements are condensed into the term 'easily accessible'. Sentence 3 of paragraph (1) has been borrowed from Article 5(6) P2B Regulation (EU) 2019/1150.

Paragraph (2) is inspired, among other things, by No 11a Annex I Unfair Commercial Practices Directive (as revised under the New Deal for Consumers 2019). However, paragraph (2) does not require a rather abstract 'control' by the platform operator (as, for instance, Article 7 P2B Regulation (EU) 2019/1150), but only the disclosure of 'financial or corporate ties' between the platform operator and the supplier if the algorithm underlying the ranking takes into account such ties.

Article 5: General Requirements for Reputation Systems

1. A platform operator who provides a reputation system on its online platform must provide information about how the relevant information is collected, processed and published as reviews.
2. The reputation system must comply with the requirements of professional diligence.
3. A reputation system is presumed to comply with the requirements of professional diligence if it complies with either:
 - a) voluntary standards adopted by a national, European or international standardisation organisation, such as ISO 20488:2018 (Online Consumer Reviews); or
 - b) the criteria set out in Article 6.

Sources:

Article 2 (h) Unfair Commercial Practices Directive 2005/29/EC; Article L 111-7-2 Code de la consommation (FR); ISO 20488:2018 (Online customer reviews)

Earlier Version:

Article 8 Discussion Draft 2016

Comments:

The provision sets out general requirements for reputation systems as defined in Article 2 (k). Paragraph (1) stipulates a general information duty and requires operators of reputation systems to provide information about the three levels of a reputation system: collection, processing and publication. The provision draws inspiration from Article L 111-7-2 of the French Code de la consommation.

Paragraph (2) contains a general clause that sets out the general standard of ‘professional diligence’ (cf Article 2 (h) Unfair Commercial Practices Directive 2005/29/EC). In paragraph (3), the general clause is complemented by a twofold presumption of conformity following the model of the ‘New Approach’, which has long been used in the field of product safety. This co-regulation approach aims to balance the flexibility and predictability of the regulatory framework for online reputation systems.

Article 6: Criteria of Professional Diligence for Reputation Systems

The criteria in the meaning of Article 5 are:

- a) The platform operator must take reasonable and proportionate steps to ensure that the review is based on a genuine experience of its object.
- b) If the platform operator claims that reviews are based on a verified transaction, it must ensure that the review originates from a party to that transaction.
- c) *If the platform operator knows or ought to know that the author of a review has received any benefit for providing the review, this must be indicated. If the platform operator knows or ought to know that the author of a review has received any benefit for giving the review a specific positive or negative content, the platform operator must ensure that no such review is or remains published.*
- d) Reviews may be rejected or removed only for a legitimate reason. The author of the review must be informed without undue delay about the rejection or removal, along with the reasons for such rejection or removal. Platform operators are not required to disclose any information which could easily be used to manipulate the reputation system to the detriment of customers.
- e) Reviews must be published without undue delay.

f) The order or relative prominence in which reviews are presented by default must not be misleading. Platform operators must provide users with easily accessible information about the main parameters determining the order or relative prominence in which reviews are presented. Reviews must indicate their submission date. Platform users must be able to view reviews in chronological order.

g) If the reputation system displays reviews for a fixed period of time only, the duration of this period must be indicated to platform users. This period must be reasonable, but not shorter than 12 months.

h) If individual reviews are combined into a consolidated rating, the calculation method must not lead to misleading results. If the consolidated rating is calculated on the basis of factors other than the numerical average of reviews, the platform operator must inform the platform users about such factors. The total number of reviews on which the consolidated rating is based must be indicated. If reviews are displayed for a fixed period of time only, reviews which are older than this period must not be used for the calculation of a consolidated rating.

i) The platform operator must provide free-of-charge mechanisms which allow platform users:

aa) to submit a reasoned notification of any abuse;

bb) who have been affected by a review to submit a response, which must be published together with that review without undue delay.

Sources:

Article 7 (6), No 23b Annex I Unfair Commercial Practices Directive (as revised under the New Deal for Consumers 2019); Articles 2 (8), 5 (6) P2B Regulation (EU) 2019/1150; ISO 20488:2018 (Online customer reviews)

Earlier Version:

Article 8 Discussion Draft 2016

Comments:

Article 6 adds a list of minimum quality requirements for reputation systems. The provision draws inspiration from various sources including Article 7 (6), No 23b Annex I Unfair Commercial Practices Directive (as revised under the New Deal for Consumers 2019), as well as ISO 20488:2018 (Online customer reviews).

Article 7: Portability of Reviews

1. The platform operator must provide a facility for existing reviews to be directly transferred at least monthly and upon the termination of the platform-user contract to the reputational system of another platform operator in a structured, commonly used and machine-readable format.

2. Before the conclusion of the platform-supplier or the platform-customer contract, the platform operator must provide information about the processes, technical requirements, timeframes and charges that apply in case a platform user wants to transfer reviews to the reputation system of another platform operator.

3. When importing reviews from another platform, the platform operator must verify that these reviews were generated in conformity with the requirements of professional diligence under paragraphs (2) and (3) of Article 5.

4. When displaying reviews imported from another platform, the platform operator must indicate that these reviews were generated on a different platform.

Sources:

Article 20 (1) General Data Protection Regulation (EU) 2016/679; Article 16 (4) Digital Content Directive (EU) 2019/770

Comments:

The provision creates the right to data portability for ‘reputational data’, which complements Article 20 (1) General Data Protection Regulation (EU) 2016/679. Under the General Data Protection Regulation (EU) 2016/679, the right to data portability is only granted for data that the data subject has provided to the data controller. It is unclear whether online reviews submitted by third parties are covered by Article 20 (1) General Data Protection Regulation (EU) 2016/679. Moreover, the General Data Protection Regulation (EU) 2016/679 does not cover reputational data concerning legal persons, eg a corporation that runs a hotel. These gaps are filled by the new provision. The data portability rule aims to reduce switching costs and avoid lock-in effects. The provision only grants the right to ‘export’ reviews. Whether platforms allow the ‘import’ of reviews originating from other platforms is for the platform operator to decide.

Paragraph (1) stipulates that platform operators must provide a technical facility for enabling the transfer of reviews to another platform. Paragraph (2) contains a transparency rule regarding the methods of data transfer (eg technical requirements, charges). Paragraph (3) is to ensure the authenticity of reviews that are imported from another platform. The ‘equivalence’ requirement is usually met if the platform from which the reviews originate uses a reputation system that complies with a standard such as ISO 20488:2018 (Online customer reviews), or the criteria set out in Article 6. Paragraph (4) requires platform operators to indicate whether a review has been imported in order to ensure that customers are not misled about the origin of the review.

Article 8: Duty to Protect Users

1. The platform operator has no general duty to monitor the activity of platform users.
2. A platform operator who, on obtaining credible evidence of

a) criminal conduct of a supplier or customer to the detriment of other users; or

b) conduct of a supplier or customer which is likely to cause physical injury, violation of privacy, infringement of corporeal property, deprivation of liberty or violation of another similar right to the detriment of another platform user,

fails to take adequate measures for the protection of the platform users, is liable for damages caused to platform users as a result of this failure.

3. Paragraph (2) also applies where the detriment is suffered by another person who stands to benefit from, or to be exposed to risks emanating from the goods, services or digital content to be provided under the supplier-customer contract.

Sources:

Articles 14 (1), 15 (1) E-Commerce Directive 2000/31/EC; general principles of tort law

Earlier Version:

Article 9 Discussion Draft 2016

Comments:

Paragraph (1) corresponds with Article 15 (1) of the E-Commerce Directive 2000/31/EC by not imposing a general obligation upon platform operators to monitor or actively seek facts or circumstances indicating illegal activity. However, a duty of the platform operator to act is set out in paragraph (2) for certain cases, which follows the model of Article 14 E-Commerce Directive 2000/31/EC.

Paragraph (2) imposes a duty to act in the event that the platform operator obtains credible evidence of illegal conduct that is to the detriment of other users. If this is the case, the platform operator is obliged to take adequate measures to prevent harm to other users. Otherwise, the platform operator becomes liable for the damage caused by this failure. By contrast, Article 14 of the E-Commerce Directive 2000/31/EC does not state any liability; the provision only formulates liability exemptions for service providers. The different approach chosen in these Model Rules illustrates the diverging aims of the two instruments. Whereas the E-Commerce Directive 2000/31/EC seeks to limit barriers for service providers to ensure the free movement of information society services, these Model Rules aim to set out some basic obligations of platform operators and possible sanctions for non-compliance.

Paragraph (3) takes into account that a breach of the obligations under paragraph (2) may not only harm the users of the platform, but also other persons foreseeably coming into contact with the platform as well as the goods, services or digital content distributed with the help of the platform. Paragraph (3) therefore provides that these persons can also claim damages against the platform operator. In line with the classical doctrines of non-contractual liability, this extension of the liability of the platform operator to other persons is limited to cases in which the other person falls under the

scope of protection of a platform-user-contract, or where a kind of 'neighbour principle' identifies persons who are so closely and directly affected by the acts or omissions of the platform that the damage was foreseeable and the liability of the platform operator can be justified.

Article 9: Duty to React to Misleading Information Given by Users

1. A platform operator has no duty to monitor information presented by suppliers or customers on the platform, unless provided otherwise by law.
2. If a platform operator receives a notification of misleading information presented by suppliers on the platform, whether about themselves or the goods, services or digital content they are offering, the platform operator must, in cooperation with the supplier, take reasonable steps to have the misleading information rectified, removed or made inaccessible. Platform operators must also take reasonable and proportionate steps to inform customers who have entered into supplier-customer contracts on their platform and who could have been affected by such misleading information.
3. Paragraph (2) applies accordingly to misleading information presented by customers about themselves.

Sources:

Articles 12, 14, 15 E-Commerce Directive 2000/31/EC

Comments:

Paragraph (1) is inspired by Article 15 (1) E-Commerce Directive 2000/31/EC. There is no general obligation imposed on a platform operator to actively monitor the information presented by users on the platform. There may, however, be exceptions to this rule under national law, such as provisions of criminal law that require platform operators to actively scan information, eg for prohibited symbols.

Paragraphs (2) and (3), which are modelled on Article 14 (1) (b) E-Commerce Directive 2000/31/EC, provide a duty to act. If the platform operator receives a notification of misleading information, it must take reasonable steps to have the misleading information rectified, removed or made inaccessible. In broadening the idea of Article 15 (1) (b) E-Commerce Directive 2000/31/EC, this rule extends the possibilities to react, eg to not only remove or to disable access to the information, but also to take measures to rectify the misleading content. As a result of the triangular relation of the platform with its different user groups, platform operators are obliged to take reasonable and proportionate steps to inform the users of their platform who have entered into contracts with other users and could have been affected by the misleading information.

A rule that obliges platform operators to provide an openly accessible means of communication for making notifications of conduct under paragraphs (2) and (3) is included in Article 10 of these Model Rules.

Article 10: Reporting Facilities

The platform operator must provide an openly accessible means of communication for making notifications of conduct under Articles 8 and 9, which also allows for anonymous notifications.

Sources

Article 11 (1) P2B Regulation (EU) 2019/1150; Articles 6(1)(c), 21 Consumer Rights Directive 2011/83/EU; CJEU case C-649/17 (Amazon EU)

Comments

This rule is inspired by the provisions of consumer law, in particular in the Consumer Rights Directive 2011/83/EU and the corresponding case law of the CJEU, which oblige the trader to enable the consumer to contact the trader quickly and communicate with him efficiently. The rule is also inspired by the P2B Regulation (EU) 2019/1150 obliging platform operators to offer an easily accessible internal complaint handling system that allows business users to lodge complaints regarding non-compliance by the platform operator with any of its obligations under the Regulation. Article 10 of these Model Rules makes use of these sources to formulate a rule that completes Articles 8 and 9, which both require the platform operator to react to notifications made by anyone. In contrast to the sources in the Consumer Rights Directive 2011/83/EU and the P2B Regulation (EU) 2019/1150, these Model Rules require that the means of communication must be openly accessible and allow for anonymous notifications. Similar to the Consumer Rights Directive 2011/83/EU and the corresponding case law of the CJEU, these Model Rules do not determine the precise nature of the means of communication that must be established by platform operators. The rule, however, requires that the means be 'accessible', which necessarily requires platform operators to provide the public with a means of communication that allows immediate contact and effective communication. After receiving such notification, the platform operator must act according to Articles 8 and 9.

Article 11: Communication via Platform

Where a platform offers facilities for communication between customers and suppliers relating to the conclusion or performance of supplier-customer contracts, the platform operator must forward any such communications without undue delay.

Sources:

Article 15 Package Travel Directive (EU) 2015/2302

Earlier Version:

Article 7 Discussion Draft 2016

Comments:

This rule is a generalisation of the underlying idea of Sentence 2 of Article 15 Package Travel Directive (EU) 2015/2302. The obligation to forward such communications without undue delay arises from the contract between the platform operator and the user.

Article 12: Unilateral Changes of the Platform-User Contract

1. A platform operator may unilaterally vary the terms of a platform-user contract, provided the following requirements are met:

a) The user is given reasonable notice of this variation on a durable medium at least one month before the variation takes effect; and

b) the variation is in accordance with good faith and fair dealing.

2. The platform operator need not observe the notice period in paragraph (1) (a) where the variation is required by a sudden change of the law, or in order to address an imminent cybersecurity risk.

3. With the notice of a variation, the user must receive a copy of the revised terms together with an explanation of what has been changed.

4. The platform user may terminate the platform-user contract on the occasion of changes of terms without having to observe any period of notice which would otherwise apply. The notice under paragraph (1) (a) must inform the user of this right.

Sources:

Article 3 (2)–(4) P2B Regulation (EU) 2019/1150

Comments:

Paragraph (1) lays down the conditions under which a platform operator may unilaterally vary the terms of its contract with a platform user. The one-month notice period under paragraph (1) (a) is modelled on Article 3 (2) P2B Regulation (EU) 2019/1150. However, the P2B Regulation (EU) 2019/1150 only provides for a notice period of ‘at least 15 days’, which will be extended when it is necessary to allow business users to make technical or commercial adaptations to comply with the changes. Paragraph (1) (b) adds, as a substantive requirement, that the variation must be in accordance with good faith and fair dealing. The P2B Regulation (EU) 2019/1150 does not contain a fairness test for unilateral changes of contract terms. Paragraph (2) contains an exception to the notice period that is modelled on Article 3 (4) P2B Regulation (EU) 2019/1150. Paragraph (3) aims at ensuring transparency regarding the changes of the platform-user contract. Paragraph (4), which grants the platform user the right to terminate, is modelled on Article 3 (2) P2B Regulation (EU) 2019/1150.

Chapter III: Duties of the Platform Operator Towards the Customer

Article 13: Duty to Inform About the Role of the Platform

At the earliest opportunity and directly before the conclusion of the supplier-customer contract, the platform operator must inform the customer, in a prominent manner, that the customer will be entering into a contract with a supplier and not with the platform operator.

Sources:

Article 7 (1) of the Proposal for a Directive on Consumer Rights 2008; Article 6a (1) (b) Consumer Rights Directive (as revised under the New Deal for Consumers 2019)

Earlier Version:

Article 11 (1) Discussion Draft 2016

Comments:

Article 13 sets out a duty of the platform operator to report its role as an intermediary. The information duty will help avoid any confusion about contractual roles. The information must be available throughout the entire 'customer journey'. Therefore, the provision requires the platform operator to provide the information 'at the earliest opportunity' and 'directly before the conclusion of the supplier-customer contract'. If the platform operator violates the information duty, the customer can exercise the rights and remedies available against the supplier under the supplier-customer contract, and also against the platform operator (cf Article 19).

Article 14: Duty to Inform About the Supplier

1. Directly before the conclusion of a supplier-customer contract, the platform operator must inform the customer, in a prominent manner, whether the supplier offers its goods, services or digital content as a trader. Where the supplier is not a trader, the platform operator should also inform the customer that consumer law does not apply to the supplier-customer contract.
2. Not later than immediately after the conclusion of a supplier-customer contract, the platform operator must inform the customer about the identity of the supplier, and must enable communication between the supplier and the customer. At the customer's request, the platform operator must disclose the address of the supplier.
3. For the purpose of paragraphs (1) and (2), the platform operator may rely on the information provided to it by the supplier, unless the platform operator knows or ought to know, on the basis of the available data regarding transactions on the platform, that this information is incorrect.

Platform operators must take adequate measures to prevent traders from appearing on the platform as non-traders.

Sources:

Article 6a (1) (b) Consumer Rights Directive (as revised under the New Deal for Consumers 2019)

Earlier Version:

Article 11 (2) Discussion Draft 2016

Comments:

It is not sufficient for customers to know that they are going to enter into a contract with a third-party supplier. They also need to know whether that third party is a trader or not, ie whether consumer law applies or not. Therefore, paragraph (1) requires the platform operator to inform the customer about the 'status' of the third-party supplier. This provision is modelled on Article 6a (1) (b) Consumer Rights Directive (as revised under the New Deal for Consumers 2019).

In addition, paragraph (2) requires the platform operator to inform the customer about the identity and the address of the third-party supplier. However, such information is only required immediately after the conclusion of the supplier-customer contract. The platform operator may have a legitimate interest in not disclosing the identity of the third-party supplier before that time, in order to protect its business model as an intermediary.

As set out in paragraph (3), the platform operator may, in principle, rely on the information provided by the third-party supplier for the purposes of paragraph (1) and paragraph (2). However, this does not apply if the platform operator knows or ought to know, on the basis of the available data regarding transactions on the platform, that the information provided by the supplier is incorrect. If, for example, a third-party supplier declares that it does not act as a trader, but the large volume or type of transactions or the large number of reviews indicates otherwise, then the platform operator must take adequate measures to ensure that customers are not misled about the status of the third-party supplier (eg ask the supplier to change the incorrect self-declaration). In this way, paragraph (3) deviates from Article 6a (1) (b) Consumer Rights Directive (as revised under the New Deal for Consumers 2019), which allows the platform operator to rely on the supplier's self-declaration without any exceptions.

Chapter IV: Duties of the Platform Operator Towards the Supplier

Article 15: Duty of the Platform Operator to Inform Suppliers

Before concluding the platform-supplier contract, the platform operator must inform the supplier on a durable medium:

- a) that the supplier will supply goods, services or digital content under contracts with customers, and not with the platform operator;
- b) how the platform-supplier contract can be terminated by the supplier;
- c) how the platform-supplier contract can be terminated by the platform operator;
- d) about fees due to the platform operator, and how they are calculated;
- e) about any payment mechanism which the platform operator provides for supplier-customer contracts; and
- f) about any method of transferring communications between the supplier and its customers.

Sources:

Article 3 P2B Regulation (EU) 2019/1150; Articles L 111-7 II 2°, D 111-8, D 111-11 Code de la consommation (FR)

Earlier Version:

Article 13 Discussion Draft 2016

Comments:

The purpose of the rule is to provide suppliers with important information about their rights and obligations in relation to the platform operator, and, above all, to make it clear to suppliers that they are not only entering into a contract with the platform operator, but also with customers. The P2B Regulation (EU) 2019/1150, in particular its Article 3, uses a different technique to achieve a rather similar goal, by requiring that the terms and conditions of platform operators are drafted in plain and intelligible language, made easily available and containing certain issues. These Model Rules have been inspired by the legislative technique of the French legislator, which provides a list of information that the platform operator has to convey to the supplier. Additionally, Article 3 of these Model Rules sets out that the information to be provided must be clear and presented in a comprehensible manner, as well as in machine-readable format.

Article 16: Duty to Provide Facilities for Informing Customers

1. The platform operator must provide the supplier with facilities for fulfilling the supplier's information duties towards the customer.
2. Where the platform-supplier contract does not exclude the supplier from using standard terms for the supplier-customer contract, the platform operator must provide a facility which allows the inclusion of these terms.

Sources:

Article D 111-9° Code de la consommation (FR)

Earlier Version:

Article 14 Discussion Draft 2016

Comments:

Paragraph (1) takes into account that, in particular if the supplier-customer contract is a consumer contract, the supplier may have numerous information duties towards the customer. In many situations, the supplier has no other possibility than conveying the necessary information via the platform. Therefore, this rule obliges the platform operator to design the platform in a way that it offers sufficient facilities to the supplier to insert the necessary information and to make it available to the customer. This rule has been inspired by a model in the French legislation. However, the rule under French law applies only to platforms on which consumer contracts are concluded. In these Model Rules, the idea has been broadened to all platforms, since pre-contractual information requirements can also apply in contracts with non-consumers.

Paragraph (2) transfers the principle expressed in paragraph (1) to the standard terms of the supplier. If the platform operator allows the supplier to use its own standard terms, it must design the platform in a way that the supplier's standard terms can be incorporated into the supplier-customer contract under the applicable rules of national law. Such rules usually require that the supplier explicitly refers to standard terms and gives the customer a reasonable opportunity to take notice of their contents. It is, therefore, not sufficient if the platform operator offers suppliers the option of entering legal texts in the shop settings or on a 'detailed seller information' page. The platform operator must also provide a facility where the supplier can make an explicit reference to its standard terms.

Article 17: Termination

1. Either party to a platform-supplier contract may terminate that contract by giving notice to the other. The period of notice for the platform operator is no shorter than 30 days for the first year, 60 days for the second year, and 90 days for the third and subsequent years during which the contractual relationship has lasted. If the platform-supplier contract stipulates a longer notice period for the supplier, that longer period also applies to the notice given by the platform operator. In order to be valid, such a longer notice period must be appropriate.
2. A party may terminate the contract with immediate effect if it has a compelling reason for doing so.
3. The notice under paragraphs (1) or (2) must specify the reasons for termination.

Sources:

Article 4 (2)–(5) P2B Regulation (EU) 2019/1150; Article 15 (2)–(4) Commercial Agents Directive 86/653/EEC

Comments:

The provision sets out requirements for the ordinary and extraordinary termination of the platform-supplier contract. Paragraph (1) concerns an ordinary termination. Unlike the P2B Regulation (EU) 2019/1150, which lays down a notice period of 30 days, the provision contains a staggered model of notice periods, which draws inspiration from Article 15 Commercial Agents Directive 86/653/EEC. Paragraph (2) concerns an extraordinary termination for compelling reasons. These Model Rules do not spell out in which cases such an extraordinary termination may be justified. It is assumed that the applicable rules of general contract law cater for this. Pursuant to paragraph (3), which applies to both ordinary and extraordinary terminations, the notice of termination must specify the reasons for the termination. In the case of an ordinary termination, the main function of this ‘duty to communicate’ is to allow the parties to clarify any misunderstandings regarding the factual basis of the decision to terminate.

Article 18: Restriction and Suspension

1. The platform operator may suspend the provision of its services to a supplier, or restrict the range of specific goods or services or digital content offered by the supplier, by giving notice to the supplier. The notice must specify the reason for the restriction or suspension.
2. Where a restriction or suspension under paragraph (1) has an effect which is similar to that of the termination of the platform-supplier contract, Article 17 applies with appropriate modifications.

Sources:

Article 4 (1) P2B Regulation (EU) 2019/1150

Comments:

The provision sets out rules for measures frequently applied by platforms such as restrictions and the suspension of accounts, which may have serious commercial consequences for suppliers. Paragraph (1) requires platform operators to notify any such measures to the supplier and specify the reasons for the restriction or suspension. The main function of this ‘duty to communicate’ is to allow the parties to clarify any misunderstandings regarding the factual basis of the platform operator’s decision (cf Article 17 (3)). This may facilitate an amicable solution between the parties.

Paragraph (2) covers situations where a restriction or suspension has an effect similar to termination. In such a case, the rules on termination (Article 16) apply with appropriate modifications.

Chapter V: Liability

Article 19: Liability of the Platform Operator for Lack of Transparency

In the case of a violation of Article 13, the customer can exercise the rights and remedies available against the supplier under the supplier-customer contract also against the platform operator.

Sources: Article 13 (1) Package Travel Directive (EU) 2015/2302; CJEU case C-149/15 (Wathelet)

Comments:

This Article partially corresponds with Article 13 (1) Package Travel Directive (EU) 2015/2302 in providing remedies to the customer in relation to a third party. However, the platform operator (as a third party) will not become part of the supplier-customer contract. In contrast to the Directive, the responsibility is justified by the fact that the platform operator did not fulfil its own duty to inform. The CJEU case C-149/15 (Wathelet) shows that in certain circumstances in which the consumer can easily be misled in light of the conditions in which the sale is carried out, eg leading the consumer to believe that the platform operator is the owner of the good, liability can be imposed on an intermediary.

Article 20: Liability of the Platform Operator with Predominant Influence

1. If the customer can reasonably rely on the platform operator having a predominant influence over the supplier, the customer can exercise the rights and remedies for the non-performance available against the supplier under the supplier-customer contract also against the platform operator.
2. When assessing whether the customer can reasonably rely on the platform operator's predominant influence over the supplier, the following criteria may be considered in particular:
 - a) The supplier-customer contract is concluded exclusively through facilities provided on the platform;
 - b) The platform operator withholds the identity of the supplier or contact details until after the conclusion of the supplier-customer contract;
 - c) The platform operator exclusively uses payment systems which enable the platform operator to withhold payments made by the customer to the supplier;
 - d) The terms of the supplier-customer contract are essentially determined by the platform operator;
 - e) The price to be paid by the customer is set by the platform operator;
 - f) The marketing is focused on the platform operator and not on suppliers; or

g) The platform operator promises to monitor the conduct of suppliers and to enforce compliance with its standards beyond what is required by law.

Sources:

Article 13 (1) Package Travel Directive (EU) 2015/2302; CJEU case C-320/16 (Uber France); CJEU case C-149/15 (Wathelet); Oberdorf v Amazon, Third Circuit Court of Appeals, No 18-1041, 7/3/19 (USA); § 311 (3) BGB (DE).

Earlier Version:

Article 18 Discussion Draft 2016

Comments:

This provision has been inspired by various sources. The liability is based on the reliance of the customer on the platform's predominant influence over the supplier. Instead of neutrally confining the service of the platform by a merely technical and automatic function, the operator rather acts in an active manner along the customer-supplier contract. In accordance with CJEU cases, the supplier's liability may be capable of being imposed on an intermediary. In Oberdorf v Amazon, Third Circuit Court of Appeals, No 18-1041, 7/3/19 (USA), the court held that Amazon is a product 'seller' that can be held liable under state law for sales on its marketplace, even though the products are sourced and shipped by third-party vendors. The court found that 'Amazon's involvement in transactions extends beyond a mere editorial function; it plays a large role in the actual sales process.' There are also doctrines of national laws on the obligations of persons who did not themselves intend to be parties to the contract. One example is § 311 (3) BGB (DE), which makes intermediaries liable who laid claim to being given a particularly high degree of trust during pre-contract negotiations. However, the sanction provided for in Article 20 goes beyond what is provided by § 311 (3) BGB (DE) as the former makes the platform operator liable for the non-performance of the supplier-customer contract.

Paragraph (1) transfers this idea to platforms. In paragraph (2), some indicative criteria are given that should be taken into consideration when assessing the predominant role of the platform operator. This is, however, not a conclusive check-list of criteria that can be applied mechanically. The criteria are only indicative and part of a case-by-case weighing. The more comprehensively the criteria were fulfilled, the more apparent a pre-dominant influence was. Ultimately, however, a court (or a neutral evaluator in an alternative dispute resolution procedure) must decide on a case-by-case basis whether there was a predominant influence.

Article 21: Exercise of Rights and Remedies Against the Platform Operator

1. Where Article 19 or Article 20 (1) apply, a customer who is a consumer can exercise against the platform operator all the rights and remedies that would be available against the supplier if the supplier were a business, irrespective of whether the supplier is a business.

2. Where Article 19 or Article 20 (1) apply, if, according to the applicable law, a customer needs to notify the supplier in order to exercise a remedy, then notifying the supplier produces all effects also in relation to the platform operator.

Sources:

CJEU case C-149/15 (Wathelet)

Comments:

Paragraph (1) deals with the situation where the customer is a consumer, but the supplier is not a trader. For the supplier-customer contract, it is clear that consumer law does not apply. The purpose of the rule in paragraph (1) is to make consumer law applicable in the legal relationship between the platform operator and the consumer in those cases where the platform operator is liable to the consumer for the non-performance of the supplier under Article 1 or 20 (1) of these rules. The consequence is that the customer is entitled to substantial diverging remedies, on the one hand against the supplier (where consumer law is not applicable) and on the other hand against the platform operator (where consumer law applies). The underlying idea of this rule has been inspired by the CJEU case referred to above.

Paragraph (2) has been formulated for cases in which the customer at first raises his or her claim only against the supplier, but later decides to also proceed against the platform operator. In such a situation, the remedies of the customer may depend on a notification or deadline, eg termination due to the non-conformity of a good, service or digital content that may already have expired. The rule in paragraph (2) ensures that a customer who has duly notified (or terminated the agreement) by notice to the supplier is treated as if he or she would have also notified the platform operator.

Article 22: Misleading Statements Made by the Platform Operator

If a platform operator makes misleading statements about suppliers or customers, about goods, services or digital content offered by suppliers, or about any other terms of the supplier-customer contract, the platform operator is liable for the damage which this misleading information causes to customers or suppliers.

Sources:

Article 11a Unfair Commercial Practices Directive (as revised under the New Deal for Consumers 2019)

Earlier Version:

Article 19 Discussion Draft 2016

Comments:

The rule is inspired, among other things, by the new Article 11a of the Unfair Commercial Practices Directive (as revised under the New Deal for Consumers 2019), which obliges Member States to grant consumers harmed by unfair commercial practices, such as giving misleading information, access to proportionate and effective remedies, including compensation for damage. The purpose of this rule is to sanction platform operators for making their own misleading statements, in particular on the quality of goods, services or digital content available on their platform. Publishing information by the platform operator regarding the goods, services or digital content that suppliers offer on the platform creates the expectation that this information is correct. However, if the information is misleading, the liability of the platform operator is justified. This creates an incentive for platform operators to ensure that they carefully examine their statements made about the goods, services, digital content offered on the platform, and about the users of the platform. This also improves the reliability of the information provided by the platform operator and enhances the users' trust in the platform.

Article 23: Guarantees

A platform operator is liable for guarantees which it gives about suppliers or customers, or about goods, services or digital content offered by suppliers.

Sources:

Article 2 No 12, Article 17 Directive (EU) 2019/771 on contracts for the sale of goods

Earlier Version:

Article 20 Discussion Draft 2016

Comments:

This rule is inspired, among other things, by the provisions on commercial guarantees in the new Directive (EU) 2019/771 on contracts for the sale of goods. The idea behind these provisions is that any (commercial) guarantee will be binding on the guarantor under the conditions laid down in the guarantee statement. In this context, a guarantee means any undertaking from the platform operator to the users of the platform, in addition to suppliers' obligations from the supplier-customer contract, to compensate the user in any way if suppliers or customers, or the goods, services or digital content offered by suppliers, do not meet the specifications or any other requirements set out in the guarantee statement. Unlike Directive (EU) 2019/771 on contracts for the sale of goods, these Model Rules apply to all guarantees given by the platform operator, irrespective of whether the user is a consumer or not.

Article 24: Liability for Violation of Other Rules

A platform operator is liable for damage caused to platform users by a violation of Articles 3, 4, 5, 7, 9 paragraphs (2) and (3), 10, 11, 14, 15, 16, 17, 18.

Sources:

Article 11a Unfair Commercial Practices Directive (as revised under the New Deal for Consumers 2019)

Comments:

The rule is inspired, among other things, by the new Article 11a of Unfair Commercial Practices Directive (as revised under the New Deal for Consumers 2019), which obliges Member States to grant consumers harmed by unfair commercial practices access to proportionate and effective remedies, including compensation for damage. These Model Rules are governed by the same general principle that an infringement of a duty must result in a sanction in order for the rule establishing that duty to have any effect. Unless sanctions are specified in other rules (such as in Articles 8, 19 and 20), this rule suggests that violations of the duties formulated in these Model Rules should result in a claim against the platform operator for compensation for the damage resulting from the breach of duty. These Model Rules do not spell out the general requirements for a claim for damages and the calculation of damages. It is assumed that the applicable rules of general contract law cater for this.

Chapter VI: Redress

Article 25: Right of Redress

1. A platform operator who, under Articles 19 or 20, has become liable towards a customer for:

- a) a supplier's misleading statements; or
- b) a supplier's failure to perform the supplier-customer contract

has the right to be indemnified by the supplier.

2. A supplier who has become liable towards a customer because of misleading statements made by the platform operator has the right to be indemnified by the platform operator.

Sources:

Article 20 Digital Content Directive (EU) 2019/770; Article 18 Directive (EU) 2019/771 on contracts for the sale of goods

Earlier Version:

Article 22 Discussion Draft 2016

Comments:

This rule generalises the principle that a person who is liable for another person's conduct (or risk) has the right to be indemnified by that person. This principle, which is expressed, among other things, in the Digital Content Directive (EU) 2019/770 and the Directive (EU) 2019/771 on contracts for the sale of goods, has been reformulated for the purposes of these Model Rules. In its two paragraphs, this rule takes into account the two most likely scenarios, being, firstly, that the platform operator seeks redress against the supplier and, secondly, that the supplier seeks redress against the platform operator.

Chapter VII: Final Provisions**Article 26: Mandatory Nature**

The parties may not deviate from these rules or vary their effects to the detriment of the platform user.

Sources:

Article 6 (1) Unfair Contract Terms Directive 93/13/EEC; Article 7 Consumer Sales Directive 1999/44/EC; Article 11 (1), (2) E-Commerce Directive 2000/31/EC; P2B Regulation (EU) 2019/1150; Article 38 Payment Services Directive (EU) 2015/2366

Comments:

This far-reaching rule sets out the mandatory nature of the Model Rules to prevent waiving them to the detriment of platform users. The rule was inspired by EU consumer law, but goes beyond it, as it does not limit the mandatory nature to relationships where a consumer is involved.

The compulsory nature of the rules, also for contracts between platforms and suppliers that are traders, was inspired by the P2B Regulation (EU) 2019/1150, which also contains mandatory provisions for relations among businesses. Another example that provides for mandatory rules for contracts between businesses is the Payment Services Directive (EU) 2015/2366, whose Article 38 (2) allows EU Member States to protect small businesses (microenterprises) as if they were consumers.

Article 27: Third-Party Complaint Mechanism

The platform operator must provide a free-of-charge openly accessible complaint mechanism which allows third parties to submit a reasoned notification of any nuisance or damage caused by platform users. Upon receiving such a notification, the platform operator must take reasonable and proportionate steps to prevent future nuisance or damage.

Sources:

Article 11 P2B Regulation (EU) 2019/1150; Articles 6(1)(c), 21 Consumer Rights Directive 2011/83/EU; CJEU case C-649/17 (Amazon EU)

Comments:

This rule enables third parties to submit notifications to the platform operator of any nuisance or damage caused by platform users. Such a notification enables the platform operator to prevent future damage to third parties, and therefore increases the standard of protection of persons that are not users of the platform. Unlike Article 11 P2B Regulation (EU) 2019/1150, which provides for a system that handles the complaints of platform users, this Article requires a complaint mechanism that allows for notifications by third parties. The complaint mechanism must be openly accessible. This requirement should be read in light of the case law of the CJEU on the accessibility of web shops for consumers. As a result, a complaint mechanism is to be considered ‘accessible’ if it allows platform operators to be contacted quickly and to communicate with them efficiently.

Article 28: Applicable Law

1. The provisions in Articles 3–11 and 27 apply to platforms which provide services as defined in Article 1 to suppliers and customers who have their habitual residence in a state which has adopted these Model Rules.
2. Article 12 and the provisions in Chapters III–V apply to platform-customer contracts and to platform-supplier contracts which are governed by the law of a state which has adopted these Model Rules.
3. The provision in Chapter VI applies to platform-customer contracts and to platform-supplier contracts where the applicable private international law on legal subrogation or multiple debtors invokes the law of a state which has adopted these Model Rules.

Sources:

Article 1 (2) P2B Regulation (EU) 2019/1150; Articles 3, 4, 6, 15, 16 Rome I Regulation (EC) 593/2008; Article 12 Rome II Regulation (EC) 864/2007

Earlier Version:

Article 24 Discussion Draft 2016

Comments:

The activities of most online platforms cross borders. Platform operators, suppliers and customers are frequently based in different countries. Article 28 deals with the international scope of application of these Model Rules.

Most of the General Provisions in Chapter 2 regulate the manner in which a platform is designed, regardless of any particular contract. They also establish in some cases a liability that is not necessarily based on contract. Paragraph (1) invokes these provisions where services as defined in Article 1 are provided to suppliers and customers who have their habitual residence in a state that has adopted the Model Rules. This fairly wide provision is based on Article 1 (2) of the P2B Regulation (EU) 2019/1150.

Paragraphs (2) and (3) follow private international rules on contracts, including in particular supplier-customer contracts, platform-supplier contracts and platform-customer contracts. Article 3 Rome I Regulation (EC) 593/2008 allows parties to choose the applicable law, with some limits imposed in favour of consumers by Article 6. As a fall back provision, Article 4 Rome I Regulation (EC) 593/2008 contains rules that apply in the absence of such a choice. Supplier-customer contracts will then mostly be governed by the law at the habitual residence of the supplier under Article 4 (1), except where Article 6 invokes the law of the country in which a consumer has its habitual residence. Platform-supplier contracts and platform-customer contracts would, in absence of a choice, presumably be governed by the domestic law of the country in which the platform operator has its habitual residence, as it is the platform operator who provides the 'characteristic performance' under Article 4 (1), again with an exception made for consumers under Article 6. Pre-contractual obligations would, under Article 12 (1) Rome II Regulation (EC) 864/2007, be governed by the same laws.

Article 28 (2) of these Model Rules builds on such private international rules for contracts and invokes the Model Rules whenever these form part of the applicable contract law. Paragraph (3) uses the same model for cases of legal subrogation and multiple debtors, corresponding to Articles 15, 16 Rome I Regulation (EC) 593/2008.

As the law of the country in which the platform operator has its habitual residence is likely to apply either through a choice of law, or by default, to platform-supplier as well as to platform-customer contracts, this is also likely to reduce possible frictions where these contracts have an effect on each other. Where, however, a platform operator uses different platforms for operating in different countries, such frictions between applicable laws are a risk that the platform operator has to bear, rather than suppliers or customers.

Synopsis of the 2016 Discussion Draft and the Model Rules on Online Platforms

Discussion Draft of a Directive on Online Intermediary Platforms	Model Rules on Online Platforms
Chapter I: Scope and Definitions	Chapter I: Scope and Definitions
<p>Article 1: Scope</p> <p>1. This Directive applies where contracts for the supply of goods, services or digital content are concluded between a supplier and a customer with the help of an online intermediary platform.</p> <p>2. This Directive does not apply to:</p> <p>(b) platforms where contracts for the supply of financial services are concluded between a supplier and a customer;</p> <p>(c) [other exceptions].</p> <p>3. This Directive does not affect national general contract law such as the rules on formation, validity, illegality or effects of a contract, in so far as general contract law aspects are not regulated in this Directive.</p>	<p>Article 1: Purpose and Scope</p> <p>1. The purpose of these Model Rules is to provide a set of rules that contribute to fairness and transparency in the relations between platform operators and platform users. They may serve as a model for national, European and international legislators as well as a source of inspiration for self-regulation and standardisation.</p> <p>2. These rules are intended to be used in relation to platforms which:</p> <p>a) enable customers to conclude contracts for the supply of goods, services or digital content with suppliers within a digital environment controlled by the platform operator;</p> <p>b) enable suppliers to place advertisements within a digital environment controlled by the platform operator which can be browsed by customers in order to contact suppliers and to conclude a contract outside the platform;</p> <p>c) offer comparisons or other advisory services to customers which identify relevant suppliers of goods, services or digital content and which direct customers to those suppliers' websites or provide contact details; or</p> <p>d) enable platform users to provide reviews regarding suppliers, customers, goods, services or digital content offered by suppliers, through a reputation system.</p> <p>3. These rules are not intended to be used in relation to platforms operated in the exercise of public authority.</p>

	<p>4. Provisions for specific sectors, such as financial services, including insurance, or package travel and linked travel arrangements, take precedence to the extent that they deviate from these rules.</p>
<p>Article 2: Definitions</p> <p>For the purpose of this Directive:</p> <p>(a) ‘online intermediary platform’ means an information society service accessible through the internet or by similar digital means which enables customers to conclude contracts with suppliers of goods, services or digital content. This does not include services which only identify relevant suppliers and which direct customers to those suppliers’ websites or contact details;</p> <p>(b) ‘platform operator’ means a trader who operates an online intermediary platform;</p> <p>(c) ‘customer’ means any natural or legal person who uses an online intermediary platform for obtaining goods, services or digital content;</p> <p>(d) ‘supplier’ means any natural or legal person who uses an online intermediary platform for marketing goods, services or digital content to customers;</p> <p>(e) ‘supplier-customer contract’ means a contract under which goods are to be delivered or services or digital content provided by a supplier to a customer against the payment of a price in money [OPT: or against any other counter-performance including personal data];</p> <p>(f) ‘platform-customer contract’ means a contract concluded between a platform operator and a customer on the use of an online intermediary platform;</p> <p>(g) ‘platform-supplier contract’ means a contract concluded between a platform operator and a supplier on the use of an online intermediary platform;</p>	<p>Article 2: Definitions</p> <p>For the purpose of these rules:</p> <p>a) ‘platform’ means an information society service which provides one or more of the services set out in paragraph (2) of Article 1.</p> <p>b) ‘platform operator’ means a trader who operates a platform;</p> <p>c) ‘customer’ means any natural or legal person who uses a platform for searching for or obtaining goods, services or digital content;</p> <p>d) ‘supplier’ means any natural or legal person who uses a platform for marketing goods, services or digital content to customers, or who has been suggested to customers by a platform;</p> <p>e) ‘supplier-customer contract’ means a contract under which goods, services or digital content are to be provided by a supplier to a customer against the payment of a price in money, or any other counter-performance, or in exchange for data;</p> <p>f) ‘platform-customer contract’ means a contract concluded between a platform operator and a customer on the use of a platform;</p> <p>g) ‘platform-supplier contract’ means a contract concluded between a platform operator and a supplier on the use of a platform;</p> <p>h) ‘consumer’ means any natural person who, in contracts covered by these rules, is acting for purposes which are outside his or her trade, business, craft or profession;</p> <p>i) ‘trader’ means any natural person or legal person, irrespective of whether privately or publicly owned, who is acting for purposes relating to its trade,</p>

<p>(h) ‘consumer’ means any natural person who, in contracts covered by this Directive, is acting for purposes which are outside his trade, business, craft or profession;</p> <p>(i) ‘trader’ means any natural person or legal person, irrespective of whether privately or publicly owned, who is acting for purposes relating to its trade, business, craft or profession in relation to contracts covered by this Directive;</p> <p>(j) ‘platform user’ means a supplier or a customer who uses the online intermediary platform;</p> <p>(k) ‘reputational feedback system’ means any mechanism for rating or reviewing suppliers, customers, goods, services or digital content.</p>	<p>business, craft or profession in relation to contracts covered by these rules;</p> <p>j) ‘platform user’ means a supplier, a customer or a person who provides a review; and</p> <p>k) ‘reputation system’ means any mechanism for collecting and publishing reviews regarding suppliers, customers, goods, services or digital content.</p>
<p>Article 3: Level of Harmonisation</p> <p>Member States must not maintain or introduce in their national law provisions diverging from those laid down in this Directive, including more or less stringent provisions affording a different level of protection for suppliers or customers [OPT: unless otherwise provided for in this Directive].</p>	
<p>Article 4: Relation to Other EU Instruments</p> <p>1. The requirements laid down in this Directive are in addition to requirements contained, in particular, in Directive 2005/29/EC, in Regulation (EU) 2016/679, as well as in Directive 2011/83/EU, Directive 2006/123/EC, Directive 2015/2366/EU and Directive 2000/31/EC.</p> <p>2. If any provision of this Directive conflicts with a provision of another Union act governing specific sectors, the provision of that other Union act prevails and applies to those specific sectors.</p>	
<p>Chapter II: General Provisions</p>	<p>Chapter II: General Obligations of Platform Operators Towards Platform Users</p>

<p>Article 5: Information</p> <p>Information to be provided under this Directive must be clear and transparent.</p>	<p>Article 3: Transparency of Information and Contract Terms</p> <p>Information to be provided under these rules, as well as contract terms, must be clear and presented in a comprehensible manner, and in machine-readable format. Contract terms must be easily available to platform users at all stages of their relationship with the platform operator, including the pre-contractual stage.</p>
<p>Article 6: Transparency of Listings</p> <p>Where the placement within a listing on the online intermediate platform depends on:</p> <p>(a) the supplier paying for better placement; or</p> <p>(b) any corporate link between supplier and platform operator this must be indicated to the customer.</p>	<p>Article 4: Transparency of Rankings</p> <p>1. Platform operators must provide users with easily accessible information about the main parameters determining rankings presented to users as a result of their search query, and the relative importance of these main parameters. This duty is without prejudice to any trade secrets regarding the underlying algorithms. Platform operators are not required to disclose any information which could easily be used to manipulate search results to the detriment of customers.</p> <p>2. Platform operators must inform users if the result of a search query has been influenced by any remuneration paid by a supplier or any other financial or corporate ties between the platform operator and the supplier.</p>
<p>Article 7: Communication via Platform</p> <p>1. Where the online intermediary platform offers facilities for communication between customer and supplier relating to the conclusion or performance of supplier-customer contracts, the platform provider must forward any communications without undue delay.</p> <p>2. For communications between a supplier and a customer, receipt of the communication by the platform operator's communication system is considered as receipt by the intended recipient if the communication was made by a</p>	

<p>consumer, or by a customer in a contract between businesses.</p>	
<p>Article 8: Reputational Feedback Systems</p> <p>1. A platform operator who provides a reputational feedback system on its online intermediary platform must provide information about the modalities of collection, processing and publication of ratings and reviews.</p> <p>2. The reputational feedback system must comply with standards of professional diligence.</p> <p>3. A reputational feedback system is presumed to comply with standards of professional diligence if it complies with either:</p> <p>(a) voluntary national standards transposing European standards, the references of which have been published by the Commission in the Official Journal of the European Union; or</p> <p>(b) the standards set out in paragraph (4).</p> <p>4. Standards in the meaning of paragraph (3) are:</p> <p>(a) If the platform operator claims that that reviews originate from real customers it has to take reasonable and proportionate steps to verify that reviews are based on a confirmed transaction.</p> <p>(b) If a review has been solicited in exchange for any benefit, this must be indicated.</p> <p>(c) If a review is rejected, the reviewer must be informed without undue delay about the rejection and the reasons for such rejection.</p> <p>(d) Reviews must be published without undue delay.</p>	<p>Article 5: General Requirements for Reputation Systems</p> <p>1. A platform operator who provides a reputation system on its online platform must provide information about how the relevant information is collected, processed and published as reviews.</p> <p>2. The reputation system must comply with the requirements of professional diligence.</p> <p>3. A reputation system is presumed to comply with the requirements of professional diligence if it complies with either:</p> <p>a) voluntary standards adopted by a national, European or international standardisation organisation, such as ISO 20488:2018 (Online Consumer Reviews); or</p> <p>b) the criteria set out in Article 6.</p> <p>Article 6: Criteria of Professional Diligence for Reputation Systems</p> <p>The criteria in the meaning of Article 5 are:</p> <p>a) The platform operator must take reasonable and proportionate steps to ensure that the review is based on a genuine experience of its object.</p> <p>b) If the platform operator claims that reviews are based on a verified transaction, it must ensure that the review originates from a party to that transaction.</p> <p><i>c) If the platform operator knows or ought to know that the author of a review has received any benefit for providing the review, this must be indicated. If the platform operator knows or ought to know that</i></p>

(e) The order in which reviews are presented by default must not be misleading. Platform users must be able to view reviews in chronological order.

(f) If the reputational feedback system excludes older reviews, this must be indicated to platform users. The exclusion period must be reasonable but not shorter than 12 months.

(g) If reviews are consolidated into an overall rating, the total number of reviews on which the rating is based must be indicated.

(h) The platform operator must provide a free-of-charge complaint mechanism which allows a platform user to submit a reasoned notification if it has doubts regarding the authenticity of a review.

5. On termination of the platform-supplier or of the platform-customer contract, the platform operator must provide a facility for existing reviews to be transferred to a different reputational feedback system in a structured, commonly used and machine-readable format.

the author of a review has received any benefit for giving the review a specific positive or negative content, the platform operator must ensure that no such review is or remains published.

d) Reviews may be rejected or removed only for a legitimate reason. The author of the review must be informed without undue delay about the rejection or removal, along with the reasons for such rejection or removal. Platform operators are not required to disclose any information which could easily be used to manipulate the reputation system to the detriment of customers.

e) Reviews must be published without undue delay.

f) The order or relative prominence in which reviews are presented by default must not be misleading. Platform operators must provide users with easily accessible information about the main parameters determining the order or relative prominence in which reviews are presented. Reviews must indicate their submission date. Platform users must be able to view reviews in chronological order.

g) If the reputation system displays reviews for a fixed period of time only, the duration of this period must be indicated to platform users. This period must be reasonable, but not shorter than 12 months.

h) If individual reviews are combined into a consolidated rating, the calculation method must not lead to misleading results. If the consolidated rating is calculated on the basis of factors other than the numerical average of reviews, the platform operator must inform the platform users about such factors. The total number of reviews on which the consolidated rating is based must be indicated. If reviews are displayed for a fixed period of time only, reviews which are older than this period must not be used for the calculation of a consolidated rating.

i) The platform operator must provide free-of-charge mechanisms which allow platform users:

aa) to submit a reasoned notification of any abuse;

	<p>bb) who have been affected by a review to submit a response, which must be published together with that review without undue delay.</p>
	<p>Article 7: Portability of Reviews</p> <p>1. The platform operator must provide a facility for existing reviews to be directly transferred at least monthly and upon the termination of the platform-user contract to the reputational system of another platform operator in a structured, commonly used and machine-readable format.</p> <p>2. Before the conclusion of the platform-supplier or the platform-customer contract, the platform operator must provide information about the processes, technical requirements, timeframes and charges that apply in case a platform user wants to transfer reviews to the reputation system of another platform operator.</p> <p>3. When importing reviews from another platform, the platform operator must verify that these reviews were generated in conformity with the requirements of professional diligence under paragraphs (2) and (3) of Article 5.</p> <p>4. When displaying reviews imported from another platform, the platform operator must indicate that these reviews were generated on a different platform.</p>
<p>Article 9: Duty to Protect Users</p> <p>If the platform operator, on obtaining credible evidence of(a) criminal conduct of the supplier or customer to the detriment of another platform user, or(b) conduct of the supplier or customer which is likely to cause physical injury, violation of privacy, infringement of [OPT: corporeal] property, deprivation of liberty or violation of another similar right of the other party, fails to take adequate measures for the protection of platform users, the platform operator is liable for damages caused to platform users by this failure.</p>	<p>Article 8: Duty to Protect Users</p> <p>1. The platform operator has no general duty to monitor the activity of platform users.</p> <p>2. A platform operator who, on obtaining credible evidence of</p> <p>a) criminal conduct of a supplier or customer to the detriment of other users; or</p> <p>b) conduct of a supplier or customer which is likely to cause physical injury, violation of privacy, infringement of corporeal property, deprivation of liberty or violation of another similar right to the detriment of another platform user,</p>

	<p>fails to take adequate measures for the protection of the platform users, is liable for damages caused to platform users as a result of this failure.</p> <p>3. Paragraph (2) also applies where the detriment is suffered by another person who stands to benefit from, or to be exposed to risks emanating from the goods, services or digital content to be provided under the supplier-customer contract.</p>
	<p>Article 9: Duty to React to Misleading Information Given by Users</p> <p>11. A platform operator has no duty to monitor information presented by suppliers or customers on the platform, unless provided otherwise by law.</p> <p>2. If a platform operator receives a notification of misleading information presented by suppliers on the platform, whether about themselves or the goods, services or digital content they are offering, the platform operator must, in cooperation with the supplier, take reasonable steps to have the misleading information rectified, removed or made inaccessible. Platform operators must also take reasonable and proportionate steps to inform customers who have entered into supplier-customer contracts on their platform and who could have been affected by such misleading information.</p> <p>3. Paragraph (2) applies accordingly to misleading information presented by customers about themselves.</p>
	<p>Article 10: Reporting Facilities</p> <p>The platform operator must provide an openly accessible means of communication for making notifications of conduct under Articles 8 and 9, which also allows for anonymous notifications.</p>
	<p>Article 11: Communication via Platform</p> <p><i>Where a platform offers facilities for communication between customers and suppliers relating to the conclusion or performance of supplier-customer</i></p>

	<i>contracts, the platform operator must forward any such communications without undue delay.</i>
	<p>Article 12: Unilateral Changes of the Platform-User Contract</p> <p>1. A platform operator may unilaterally vary the terms of a platform-user contract, provided the following requirements are met:</p> <p>a) The user is given reasonable notice of this variation on a durable medium at least one month before the variation takes effect; and</p> <p>b) the variation is in accordance with good faith and fair dealing.</p> <p>2. The platform operator need not observe the notice period in paragraph (1) (a) where the variation is required by a sudden change of the law, or in order to address an imminent cybersecurity risk.</p> <p>3. With the notice of a variation, the user must receive a copy of the revised terms together with an explanation of what has been changed.</p> <p>4. The platform user may terminate the platform-user contract on the occasion of changes of terms without having to observe any period of notice which would otherwise apply. The notice under paragraph (1) (a) must inform the user of this right.</p>
<p>Article 10: Mandatory Nature</p> <p>Any contractual term in a platform-customer contract or a platform-supplier contract which, to the detriment of the customer or the supplier, excludes the application of the national measures transposing the provisions of this Chapter, derogates from them or varies their effects is not binding.</p>	
<p>Chapter III: Duties of the Platform Operator Towards the Customer</p>	<p>Chapter III: Duties of the Platform Operator Towards the Customer</p>
<p>Article 11: Duty to Inform About Platform Operator and Supplier</p>	<p>Article 13: Duty to Inform About the Role of the Platform</p>

<p>1. The platform operator must inform the customer [OPT: in good time] before the conclusion of a supplier-customer contract that the customer will be entering into a contract with a supplier and not with the platform operator.</p> <p>2. The platform operator must ensure that the supplier informs the customer whether it offers its goods, services or digital content as a trader.</p>	<p>At the earliest opportunity and directly before the conclusion of the supplier-customer contract, the platform operator must inform the customer, in a prominent manner, that the customer will be entering into a contract with a supplier and not with the platform operator.</p> <p>Article 14: Duty to Inform About the Supplier</p> <p>1. Directly before the conclusion of a supplier-customer contract, the platform operator must inform the customer, in a prominent manner, whether the supplier offers its goods, services or digital content as a trader. Where the supplier is not a trader, the platform operator should also inform the customer that consumer law does not apply to the supplier-customer contract.</p> <p>2. Not later than immediately after the conclusion of a supplier-customer contract, the platform operator must inform the customer about the identity of the supplier, and must enable communication between the supplier and the customer. At the customer's request, the platform operator must disclose the address of the supplier.</p> <p>3. For the purpose of paragraphs (1) and (2), the platform operator may rely on the information provided to it by the supplier, unless the platform operator knows or ought to know, on the basis of the available data regarding transactions on the platform, that this information is incorrect. Platform operators must take adequate measures to prevent traders from appearing on the platform as non-traders.</p>
<p>Article 12: Mandatory Nature in Favour of Consumers</p> <p>In relations between a platform operator and a consumer the parties may not, to the detriment of the consumer, exclude the application of the national measures transposing the provisions in this chapter or derogate or vary its effect.</p>	

<p>Chapter IV: Duties of the Platform Operator Towards the Supplier</p>	<p>Chapter IV: Duties of the Platform Operator Towards the Supplier</p>
<p>Article 13: Duty to Inform About Online Intermediate Platform</p> <p>Before concluding the platform-supplier contract, the platform operator has a duty to inform the supplier:</p> <p>(a) that the supplier will supply goods, services or digital content under contracts with customers and not with the platform operator;</p> <p>(b) about fees due to the platform operator, and how they are calculated;</p> <p>(c) about any payment mechanism which the platform operator provides for supplier–customer contracts;</p> <p>(d) about any method of transferring communications between the supplier and its customers;</p> <p>(e) whether the platform operator selects customers for the supplier, and whether the supplier has the right to reject a proposed customer [OPT: a proposed supplier-customer contract].</p>	<p>Article 15: Duty of the Platform Operator to Inform Suppliers</p> <p>Before concluding the platform-supplier contract, the platform operator must inform the supplier on a durable medium:</p> <p>a) that the supplier will supply goods, services or digital content under contracts with customers, and not with the platform operator;</p> <p>b) how the platform-supplier contract can be terminated by the supplier;</p> <p>c) how the platform-supplier contract can be terminated by the platform operator;</p> <p>d) about fees due to the platform operator, and how they are calculated;</p> <p>e) about any payment mechanism which the platform operator provides for supplier-customer contracts; and</p> <p>f) about any method of transferring communications between the supplier and its customers.</p>
<p>Article 14: Duty to Provide Facilities for Informing Customers</p> <p>The platform operator must provide to the supplier facilities for fulfilling the supplier’s information duties towards the customer.</p>	<p>Article 16: Duty to Provide Facilities for Informing Customers</p> <p>1. The platform operator must provide the supplier with facilities for fulfilling the supplier’s information duties towards the customer.</p> <p>2. Where the platform-supplier contract does not exclude the supplier from using standard terms for the supplier-customer contract, the platform operator must provide a facility which allows the inclusion of these terms.</p>
	<p>Article 17: Termination</p> <p>1. Either party to a platform-supplier contract may terminate that contract by giving notice to the other. The period of notice for the platform operator is no shorter than 30 days for the first year, 60 days for the second year, and 90 days for the third and</p>

	<p>subsequent years during which the contractual relationship has lasted. If the platform-supplier contract stipulates a longer notice period for the supplier, that longer period also applies to the notice given by the platform operator. In order to be valid, such a longer notice period must be appropriate.</p> <p>2. A party may terminate the contract with immediate effect if it has a compelling reason for doing so.</p> <p>3. The notice under paragraphs (1) or (2) must specify the reasons for termination.</p>
	<p>Article 18: Restriction and Suspension</p> <p>1. The platform operator may suspend the provision of its services to a supplier, or restrict the range of specific goods or services or digital content offered by the supplier, by giving notice to the supplier. The notice must specify the reason for the restriction or suspension.</p> <p>2. Where a restriction or suspension under paragraph (1) has an effect which is similar to that of the termination of the platform-supplier contract, Article 17 applies with appropriate modifications.</p>
<p>Article 15: Mandatory Character of the Rules</p> <p>The parties may not exclude or deviate from the provisions of Chapter 4 to the detriment of the supplier. [OPT: This does not apply to platform operators who exclusively accept businesses as platform users].</p>	
<p>Chapter V: Liability of the Platform Operator</p>	<p>Chapter V: Liability</p>
<p>Article 16: Overview</p> <p>1. A platform operator who presents itself to customers and suppliers as intermediary in a prominent way is not liable for non-performance under supplier-customer contracts.</p> <p>2. In addition to any other liability of the platform operator under platform-supplier</p>	

<p>contracts or platform-customer contracts, a platform operator may be liable:</p> <p>(a) to customers for failure to remove misleading information given by suppliers under Article 17;</p> <p>(b) to customers who can reasonably rely on the predominant influence of the platform operator over suppliers under Article 18;</p> <p>(c) to customers or suppliers for misleading statements made by the platform operator under Article 19;</p> <p>(d) to customers or suppliers for guarantees given under Article 20.</p>	
	<p>Article 19: Liability of the Platform Operator for Lack of Transparency</p> <p>In the case of a violation of Article 13, the customer can exercise the rights and remedies available against the supplier under the supplier-customer contract also against the platform operator.</p>
<p>Article 17: Duty to Remove Misleading Information Given by Suppliers</p> <p>1. If a supplier presents misleading information on the platform, and this is communicated by a notification addressed to the platform operator, the platform operator is liable for damages caused by the misleading information unless the platform operator takes appropriate measures to remove or rectify the misleading information.</p> <p>2. If the platform operator uses a reputational feedback system for rectifying misleading information provided by the supplier, the platform operator bears the burden of proof that misleading information presented by the supplier was efficiently counteracted through the reputational feedback system.</p> <p>3. Where Article 18 applies, the platform operator cannot use a reputational feedback</p>	

<p>system for discharging the duty under paragraph (1).</p>	
<p>Article 18: Liability of the Platform Operator for Non-Performance of Suppliers</p> <p>1. If the customer can reasonably rely on the platform operator having a predominant influence over the supplier, the platform operator is jointly liable with the supplier for non-performance of the supplier-customer contract.</p> <p>2. When assessing whether the customer can reasonably rely on the platform operator's predominant influence over the supplier, the following criteria are to be considered in particular:</p> <p>(a) The supplier-customer contract is concluded exclusively through facilities provided on the platform;</p> <p>(b) The platform operator can withhold payments made by customers under supplier-customer contracts;</p> <p>(c) The terms of the supplier-customer contract are essentially determined by the platform operator;</p> <p>(d) The price to be paid by the customer is determined by the platform operator;</p> <p>(e) The platform operator provides a uniform image of suppliers or a trademark;</p> <p>(f) The marketing is focused on the platform operator and not on the suppliers;</p> <p>(g) [OPT:] The platform operator promises to monitor the conduct of suppliers.</p>	<p>Article 20: Liability of the Platform Operator with Predominant Influence</p> <p>1. If the customer can reasonably rely on the platform operator having a predominant influence over the supplier, the customer can exercise the rights and remedies for the non-performance available against the supplier under the supplier-customer contract also against the platform operator.</p> <p>2. When assessing whether the customer can reasonably rely on the platform operator's predominant influence over the supplier, the following criteria may be considered in particular:</p> <p>a) The supplier-customer contract is concluded exclusively through facilities provided on the platform;</p> <p>b) The platform operator withholds the identity of the supplier or contact details until after the conclusion of the supplier-customer contract;</p> <p>c) The platform operator exclusively uses payment systems which enable the platform operator to withhold payments made by the customer to the supplier;</p> <p>d) The terms of the supplier-customer contract are essentially determined by the platform operator;</p> <p>e) The price to be paid by the customer is set by the platform operator;</p> <p>f) The marketing is focused on the platform operator and not on suppliers; or</p> <p>g) The platform operator promises to monitor the conduct of suppliers and to enforce compliance with its standards beyond what is required by law.</p>
	<p>Article 21: Exercise of Rights and Remedies Against the Platform Operator</p>

	<p>1. Where Article 19 or Article 20 (1) apply, a customer who is a consumer can exercise against the platform operator all the rights and remedies that would be available against the supplier if the supplier were a business, irrespective of whether the supplier is a business.</p> <p>2. Where Article 19 or Article 20 (1) apply, if, according to the applicable law, a customer needs to notify the supplier in order to exercise a remedy, then notifying the supplier produces all effects also in relation to the platform operator.</p>
<p>Article 19: Misleading Statements Made by the Platform Operator</p> <p>1. If a platform operator makes misleading statements about suppliers or about goods, services or digital content offered by suppliers, the platform operator is liable for damage which this misleading information has caused to customers.</p> <p>2. If a platform operator makes misleading statements about customers, the platform operator is liable for damage which this misleading information has caused to suppliers.</p>	<p>Article 22: Misleading Statements Made by the Platform Operator</p> <p>If a platform operator makes misleading statements about suppliers or customers, about goods, services or digital content offered by suppliers, or about any other terms of the supplier-customer contract, the platform operator is liable for the damage which this misleading information causes to customers or suppliers.</p>
<p>Article 20: Guarantees</p> <p>A platform operator is liable for guarantees given about suppliers or customers, or about goods, services or digital content offered by suppliers.</p>	<p>Article 23: Guarantees</p> <p>A platform operator is liable for guarantees which it gives about suppliers or customers, or about goods, services or digital content offered by suppliers.</p>
	<p>Article 24: Liability for Violation of Other Rules</p> <p>A platform operator is liable for damage caused to platform users by a violation of Articles 3, 4, 5, 7, 9 paragraphs (2) and (3), 10, 11, 14, 15, 16, 17, 18.</p>
<p>Article 21: Mandatory Nature</p> <p>The parties may not deviate from the platform user's rights arising from the national measures transposing the provisions of this Chapter or vary their effects to the detriment of the platform user. [OPT: This does not apply to</p>	

platform operators who exclusively accept businesses as platform users].	
Chapter VI: Recourse	Chapter VI: Redress
<p>Article 22: Right to Redress</p> <p>1. A platform operator who, under Articles 17 or 18, has become liable towards a customer for:</p> <p>(a) a supplier’s misleading statements; or</p> <p>(b) a supplier’s failure to perform the supplier-customer contract has the right to be indemnified by the supplier.</p> <p>2. A supplier who has become liable towards a customer because of misleading statements made by the platform operator has the right to be indemnified by the platform operator.</p>	<p>Article 25: Right of Redress</p> <p>1. A platform operator who, under Articles 19 or 20, has become liable towards a customer for:</p> <p>a) a supplier’s misleading statements; or</p> <p>b) a supplier’s failure to perform the supplier-customer contract</p> <p>has the right to be indemnified by the supplier.</p> <p>2. A supplier who has become liable towards a customer because of misleading statements made by the platform operator has the right to be indemnified by the platform operator.</p>
<p>Article 23: Mandatory Nature</p> <p>The parties may not deviate from the supplier’s rights arising from the national measures transposing the provisions of this Chapter or vary their effects to the detriment of the supplier.</p>	
Chapter VII: Final Provisions	Chapter VII: Final Provisions
	<p>Article 26: Mandatory Nature</p> <p>The parties may not deviate from these rules or vary their effects to the detriment of the platform user.</p>
	<p>Article 27: Third-Party Complaint Mechanism</p> <p>The platform operator must provide a free-of-charge openly accessible complaint mechanism which allows third parties to submit a reasoned notification of any nuisance or damage caused by platform users. Upon receiving such a notification, the platform operator must take reasonable and proportionate steps to prevent future nuisance or damage.</p>

Article 24: Applicable Law

- 1. The national measures of a Member State transposing the provisions in Chapter II apply to online intermediary platforms which operate in the internal market and are run by platform operators who have their habitual residence in that state. Online intermediary platforms which are run by platform operators who have their habitual residence in a non-Member State are governed by the national measures transposing the provisions in Chapter II of the Member State where the interests of suppliers or customers are, or are likely to be, affected.
- 2. The national measures of a Member State transposing the provisions in Chapters III–V apply to platform-customer contracts and to platform-supplier contracts which are governed by the law of that Member State. Article 12 Regulation (EC) 864/2007 applies accordingly.
- 3. The national measures of a Member State transposing the provision in Chapter VI apply to platform-customer contracts and to platform-supplier contracts where Article 15 Regulation EC 593/2008 invokes the law of that Member State.
- 4. Regardless of whether they are consumers, customers may not be deprived of the protection offered by this Directive by a choice of the law of a non-Member State. This does not apply to platform operators which exclusively accept businesses as customers.

Article 25: Enforcement

- 1. Member States must ensure that adequate and effective means exist to ensure compliance with this Directive.
- 2. The means referred to in paragraph 1 must include provisions whereby one or more of the following bodies, as determined by national law, may take action under national law before the courts or before the competent administrative bodies to ensure that the

Article 28: Applicable Law

- 1. The provisions in Articles 3–11 and 27 apply to platforms which provide services as defined in Article 1 to suppliers and customers who have their habitual residence in a state which has adopted these Model Rules.
- 2. Article 12 and the provisions in Chapters III–V apply to platform-customer contracts and to platform-supplier contracts which are governed by the law of a state which has adopted these Model Rules.
- 3. The provision in Chapter VI applies to platform-customer contracts and to platform-supplier contracts where the applicable private international law on legal subrogation or multiple debtors invokes the law of a state which has adopted these Model Rules.

<p>national provisions transposing this Directive are applied:</p> <ul style="list-style-type: none"> (a) public bodies or their representatives; (b) consumer organisations having a legitimate interest in protecting consumers; (c) professional organisations having a legitimate interest in acting. 	
<p>Article 26: Penalties</p> <p>1. Member States must lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and must take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive.</p> <p>2. Member States must notify those provisions to the Commission by ... and must notify it without delay of any subsequent amendment affecting them.</p>	
<p>Article 27: Transposition</p> <p>1. Member States must adopt and publish, by ..., the laws, regulations and administrative provisions necessary to comply with this Directive. They must forthwith communicate to the Commission the text of these measures in the form of documents and inform the Commission of any subsequent amendments without delay. They must apply those measures from ... [6 months later than the date in the first sentence]. When Member States adopt those measures, they must contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States may determine how such reference is to be made.</p> <p>2. The provisions of this Directive apply to contracts by ... [6 months later than the date in the first sentence of para (1)], irrespective of whether or not concluded before, on or after this date].</p>	

<p>Article 28: Entry into Force</p> <p>This Directive enters into force on the 20th day following its publication in the Official Journal of the European Union.</p>	
<p>Article 29: Addressees</p> <p>This Directive is addressed to the Member States.</p>	

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