Athens Journal of Law - Volume 11, Issue 2, April 2025 – Pages 129-142

Platform-to-business Contracts in Light of European Laws in the Digital Society

By Maria Luisa Chiarella[*] & Manuela Borgese[♦]

Platform economy is a business model that gives life to a virtual market in which supply and demand for goods and services meet thanks to online platforms. These latter play an important role in the digital environment since they represent the access points to the market: in fact, the relationships between business users and consumers are managed by online platforms which hold disproportionate power as online intermediators and search engines. For this reason, a crucial role is played by platforms-to-business relationships, also bearing in mind the need of protection for business users in relation to the former as dominant companies. European legislation aims to fight potential unfair behaviour and to re-balance asymmetric relationships between these digital giants and business users within European market policies. The purpose of this paper is to observe EU norms in the light of their implementation.

Keywords: *Digital markets; online platforms; P2B contracts; weaker party protection; European policies; market regulation.*

Introduction

The role of online platforms, understood as search engines, social media, online sales systems, is increasingly central and essential for citizens and businesses.

Due to the immediacy of the technological context and the wide range of action amplified by the operation of the Internet, the use of these digital intermediation systems brings rapid and advantageous benefits, with a significant economic and social impact.

The strategic growth of these services, thanks to the achievement of objectives of absolute importance[1], has led to what is now known coloquially as the so-called "platform economy", whose economic value has grown from three billion euros in 2016 to fourteen billion in 2020[2], with interesting growth prospects.

These data represent the affirmation of the increasingly central importance of platforms, as a key segment for entrepreneurship, the creation of new business

[*]Ph.D., Associate Professor of Private Law, Magna Græcia University of Catanzaro, Italy; authoress of paragraphs 4, 5 and 6.
Email: mlchiarella@unicz.it
[♦]Ph.D., Professor by contract at postgraduate courses, Magna Græcia University of Catanzaro, Italy; authoress of paragraphs 1, 2 and 3.
Email: manuela.borgese@unicz.it

[1]Ruggeri (2021) at 23 et seq.

[2]The estimates of the Council of Europe, available at the following link https://www.consilium.europa.eu/en/infographics/platform-economy/, refer to the reference period prior to the drafting of the regulation in question. The estimates for 2020 have undergone strong growth also thanks to the important role assumed by platforms during the pandemic phase.

https://doi.org/10.30958/ajl.11-2-4 doi=10.30958/ajl.11-2-4

models and access to the great opportunities of the European internal market, for a complex series of reasons and to the advantage of multiple recipients.

First of all, the platform becomes an essential point of access to the market[3], qualifying itself as a true *matchmaker*[4], through the provision of a virtual space that facilitates the meeting of supply and demand of the parties. Depending on the specific type of business linked to the platform, this facilitation may consist in the stipulation of a contract that will be implemented within the platform (e.g. Uber, App store), outside (Booking)[5] or aimed at the meeting of users (Meta, Tinder, LinkedIN).

A further advantage is linked to the potential facilitated meeting of the platform's customers, being on the same platform because they are actually interested in the specific type of service offered therein. This circumstance allows economic operators to meet a selected clientele that is more interested in their services, thus increasing business opportunities and, consequently, turnover.

From the consumers' point of view, the benefit translates into access to a wide range of goods and services from different economic operators in a single virtual environment. In this way, the consumer is no longer limited and tied to local options but, with access to a single virtual environment, has available a wide range of goods and services, without geographical limitations and at much more convenient economic conditions.

Another impacted category is that of economic operators for whom the platforms entail considerable advantages, mainly linked to the facilitation of the digital transition. These effects are reflected especially on small and medium-sized enterprises, often lacking adequate skills and suitable infrastructures for the management of their own online sales channel, their own e-commerce site or resources for the advertising of their products or services. The final result is therefore to allow the company, even if it does not have its own online store[6], to be able to sell their goods or services, reaching many customers and in significantly large geographical areas.

The last category involved in the *platform economy*[7] is the occupational one, not directly the subject of this contribution but of great economic impact, created by the new needs of the digital supply chain. The rise of these new work contexts has been accompanied by an increase in the employment rate of these new types of workers, specialized in this new strategic context[8].

The optimistic and positive picture presented up to now should not lead one to believe that this scenario is free from risks or negative ramifications.

---

[3]Ruggieri (2021) at 397- 422.
[4]Restelli (2022) at 4-10.
[5]Palmieri (2019) at 18 et seq.
[6]Proposal for a regulation of the European Parliament and of the Council on promoting fairness and transparency for business users of online intermediation service.
[7]Pais (2019).
[8]According to the analysis of the Council of the EU digital workers represent a significant percentage of the EU workforce which by 2022 with a size of 28, 2 million is expected to increase to 43 million in 2025. In this regard, it should be noted that this issue is at the centre of the regulatory policies of the Union which, following a long process, is close to approving the directive relating to the improvement of working conditions. of work in work through digital platforms. See: https://www.consilium.europa.eu/it/infographics/digital-platform-workers/

In the contractual interaction between platforms, consumers and commercial operators, new protection needs emerge daily due to the increasingly central and important role that they play. In particular, one of the problems that has attracted the most attention is that of the role of intermediary between online companies and consumers, due to the possible risks of monopoly attributable to the platforms and their abuses of dominant position[9]. The first element concerns the costs that operators must sustain to use the services made available by the platforms, which are anything but free and, indeed, subject to continuous and indiscriminate increases[10].

Another aspect concerns the specific types of services made available to economic operators and the transparency and fairness requirements that should characterise their dynamics. With regard to the issues arising from these reports, from the findings[11] of the European Commission in the drafting phase of the regulation which is the subject of this discussion, the main problems were: changes to the terms and conditions of service imposed by the platforms unilaterally and without notice; delisting of products, services or companies; suspension of accounts without notice and adequate justification, in the absence of adequate compensatory guarantees in favour of the economic operator; lack of transparency and explainability of the classification criteria (so-called rating) of business users or their offers; lack of clarity on the conditions of access and use of the access and use of data, personal and non-personal, collected and aggregated by the platforms; lack of adequate dispute resolution remedies; discrimination of companies to favour competing services offered by the same online platforms, for example through a more favourable classification or the use of transaction data to improve their products/services; "most favoured nation" (MFN) clauses which require a supplier to offer a product or service on an online platform at the lowest price and/or under the best conditions offered and may have an anti-competitive effect[12].

---

[9]In order to resolve such conduct, the European Commission has recently launched a public consultation inviting stakeholders to submit comments on the draft guidelines on abuses of a dominant position aimed at excluding competition. The issue concerns precisely art. 102 Treaty on the Functioning of the EU, which prohibits abusive conduct by companies holding a dominant position on the market. Most cases of abuse of a dominant position concern practices that have an exclusionary effect on actual or potential competitors. In this sense, consider the numerous judgments of the European Court of Justice that condemn platforms for their dominant position, in violation of art. 102 TFEU: See for example the judgment of the Court in case C-48/22 P | Google and Alphabet v Commission (Google Shopping) in which Google was ordered to pay 2.4 billion euros for having abused its dominant position by favouring its own product comparison service. In this sense also the jurisprudence of the Italian Supervisory Authority (AGCM) which in the A528 proceeding condemned Amazon for having damaged competing operators in the e-commerce logistics service.

[10]According to an ISTAT analysis, the percentage of commissions went from 16.5% to 16.7% in 2021 and has maintained constant levels of increase since then. ISTAT, Analysis of statistical measures for Goal. https://www.istat.it/storage/rapporti-tematici/sdgs/2023/goal9.pdf

[11]See European Parliament briefing https://www.europarl.europa.eu/RegData/etudes/BRIE/2018/625134/EPRS_BRI(2018)625134_EN.pdf and the outcomes of the preparatory work of the P2B Regulation https://wayback.archive-it.org/12090/20180805113004/https://ec.europa.eu/digital-single-market/en/business-business-trading-practices and in the Proposal for a Regulation of the European Parliament and of the Council of the P2B Regulation promoting fairness and transparency for business users of online intermediation services, COM (2018) 238 final.

[12]In argument, see Italian AGCM decision no. 1779/2015 in the proceedings against Booking and Expedia, which contests the MNF clauses because they "appear to integrate vertical restrictions that

Due to the critical issues identified, the European Commission has launched several investigations into the state of compliance of the main regulations in force regarding commercial practices and consumer rights[13], which have highlighted the need to strengthen the legislative apparatus with provisions more adequate to the new needs of a single market that is growing and constantly evolving.

With specific regard to the topic of this paper, attention will be focused on critical issues and remedies relating to the relationships between platforms and economic operators, with regard to the regulatory protection offered by Regulation (EU) 2019/ 1150 of the European Parliament and of the Council of 20 June 2019 which promotes fairness and transparency for commercial users of online intermediation services (so-called "P2B").

Following the regulatory analysis, the obligations and protections offered by P2B and the fulfilments implemented, together with the new protection tools, we will understand the real starting point of this regulation and its actual effectiveness with respect to the ever-changing needs of this new digital economy.

Regulatory Framework

The P2B regulation is part of the broader framework governing the digital market[14], a flagship project within the European strategy, using regulatory harmonization as a key strategic tool for strengthening the EU. After multiple interventions and recommendations by EU institutions, on 6 May 2015[15] the Commission launched the Digital Single Market Strategy. This strategy is based on improving access to

may constitute violations of Article 101 of the TFEU as they are capable of significantly limiting competition on price and offer conditions both between different platforms and between different sales channels". https://www.agcm.it/dotcmsDOC/allegati-news/I779_chiusura.pdf

[13]See Report of the Fitness Check on Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC andc2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive'); Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts; Directive 98/6/EC of the European Parliament and of the Council of 16 February 1998 on consumer protection in the indication of the prices of products offered to consumers; 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; Directive 2009/22/EC of the European Parliament and of the Council of 23 April 2009 on injunctions for the protection of consumers' interests; Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising, {SWD(2017) 208 final}.

[14]In its Resolution of 20 May 2010 on creating a single market for consumers and citizens (2010/ 2011(INI), (2011/C 161 E/14) https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX: 52010IP0186), the European Parliament examined the enormous benefits associated with the creation of a single market for citizens and businesses and indicated the path to follow in order to facilitate its adoption as much as possible.

[15]Please refer to the detailed reconstruction of the process of formation of the single market in "Ubiquity of the digital single market", Thematic Notes on the European Union, September 2020, in https://www.europarl.europa.eu/factsheets/it/sheet/43/ubiquita-del-mercato-unico-digitale

digital goods and services throughout the EU, to promote conditions for the growth of innovative networks and services, and unlock the Union's economic potential.

In 2020, the Communication "Shaping Europe's digital future"[16] set the scope of Community action in aiming to achieve three objectives: the digital transition, achieving a fair and competitive economy, and creating an open, democratic and sustainable society. In the post-COVID landscape and following a reassessment of Europe's needs, the Commission identified four cardinal points in "The Digital Compass 2030: A European blueprint for the Digital Decade"[17]. These key points are: digital skills, sustainable, secure and high-performance digital infrastructures, digital transformation of businesses, and the digitalisation of public services.

Within the proposed strategy, the adoption of fundamental regulations to serve as key pillars to support the creation of a robust Digital Single Market. The adoption of these regulations was driven by the need for harmonization and the removal of structural barriers, which are key factors in the opening and circularity of this single market[18]. Notable examples include: the regulation on cross-border parcel delivery[19]; the directive on copyright and related rights in the digital single market[20]; the directive on certain aspects of contracts for the supply of digital content and digital services[21]; the regulation on the prohibition of geoblocking[22]; the regulations on

[16]Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - Shaping Europe's digital future, COM(2020) 67 final

[17]Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, "Digital Compass 2030: A European blueprint for the Digital Decade", COM(2021) 118 final, eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52021DC0118

[18]Alpa (2021).

[19]Regulation (EU) 2018/644 of the European Parliament and of the Council of 18 April 2018 on cross-border parcel delivery services https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32018R0644.

[20]Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC DIRECTIVE (EU) 2019/ 790 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL - of 17 April 2019 - on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/ 29/ EC (europa.eu) .

[21]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 https://eur-lex.Europa.eu/legal-content/EN /TXT/HTML/?uri=CELEX:32019L0770

[22]Regulation (EU) 2018/302 of the European Parliament and of the Council of 28 February 2018 on addressing unjustified geo-blocking and other forms of discrimination based on customers' nationality, place of residence or place of establishment within the internal market and amending Regulations (EC) No 2006/2004 and (EU) 2017/2394 and Directive 2009/22/EC. https://eur-lex.europa.eu/eli/reg/2018/302/oj

electronic identification[23]; the regulation on the protection of personal data[24]; the regulation on artificial intelligence (AI ACT)[25].

In this context, Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019, in force since July 2020, is central to this discussion. It establishes a set of harmonized rules for the benefit of both commercial users[26] and the owners of corporate websites[27], who use online intermediation services[28] and online search engines[29] to offer goods and services to consumers.

Shorty after, but closely connected to this, is the so-called Digital Service Package[30], composed of the Digital Services Act[31] (DSA) and the Digital Markets Act (DMA)[32]. These aim to foster a safe digital space, innovation, growth and competitiveness[33], while respecting the users' fundamental rights.

In particular, the DSA serves as the general framework of reference for the horizontal regulation of relationships involving any entity that provides an information society service[34], promoting conditions of transparency and fairness. The DMA, on the other hand, addresses vertically the entities classified as "Gatekeepers"[35], imposing

[23]Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02014R0910-20240520 amended by Regulation (EU) 2024/1183.

[24]Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32016R0679

[25]Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonized rules on artificial intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168 /2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act). https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32024R1689&qid=1727081424953.

[26]Art.2, par.1 P2B.

[27]Art.2, par.7 P2B.

[28]Art.2, par.6 P2B.

[29]Art.2, par.5 P2B.

[30]https://digital-strategy.ec.europa.eu/en/policies/digital-services-act-package

[31]Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and amending Directive 2000/31/EC https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32022R2065. In argument, see Chiarella (2023) at 33 et seq.; Allegri (2021) at 10 et seq.

[32]Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828. https://eur-lex.europa.eu/legal-content/EN/TXT/?toc=OJ%3AL%3A2022%3A265%3ATOC&uri=uriserv%3AOJ.L_.2022.265.01.0001.01.ENG. See, again, Chiarella (2023) at 33 et seq.; Allegri (2021) at 10 et seq.

[33]Allegri (2021) at 12-16.

[34]Foglia (2024).

[35]According to art. 2 of DMA, Gatekeeper is a 'core platform service' means any of the following: online intermediation services; online search engines; online social networking services; video-sharing platform services; number-independent interpersonal communications services; operating systems; web browsers; virtual assistants; cloud computing services; online advertising services, including any advertising networks, advertising exchanges and any other advertising intermediation services, designated pursuant to Article 3, which provides the designation when the platform if: it has a significant impact on the internal market; it provides a core platform service which is an important

specific obligations on them to maintain competition and prevent the economic imbalances deriving from their pivotal position. Prior to these regulations, the P2B, in an even more sectoral manner, regulates the relationships between online platforms and companies based on the principles of fairness and transparency. We will now examine it more closely.

Obligations and Protections of the P2B Regulation

Generally speaking, the Regulation's primary goal is to create a digital environment based on the transparency and predictability of the behaviour of economic operators in contractual relationships with platforms. More specifically, the P2B, to its merit, introduced a series of previously nonexistant protections to ensure a balance between the parties involved, in pro-competitive terms[36]. This was particularly necessary in Business-to-Business (B2B) settings, where there had been an assumption—often inaccurate—that all parties had equal bargaining power and the freedom to define contractual terms.[37].

The gap between this assumption and the actual reality, as observed by the Commission, highlighted the need for a rethink of these dynamics, especially with the rise of the platform economy. To address these issues, the P2B Regulation includes protective measures for situations where an imbalance of that kind exists, such as delisting[38], the obscurity in the algorithms for the ranking of visibility of goods or services or of information provided to users, in addition to the inaccessibility of the big data in the possession of these companies[39].

The Regulation's approach focuses on transparency, fairness in contractual relations, and predictability of any circumstance modifying the relationship between the parties.

As anticipated, the legislation establishes a complex set of rules applicable to: providers of online intermediation services, understood as information society services[40] that allow "business users to offer goods or services to consumers, with the aim of facilitating the initiation of direct transactions between such business users and consumers, regardless of where such transactions are concluded and are provided to business users on the basis of contractual relationships between the provider of such services and business users offering goods and services to

gateway for business users to reach end users; and it enjoys an entrenched and durable position, in its operations, or it is foreseeable that it will enjoy such a position in the near future.

[36]Pardolesi (2021).

[37]Forlan (2019).

[38]With regard to the phenomenon of "delisting", see the reference to recital (22) P2B providers of online intermediation services can also restrict individual listings of business users; for example, through their demotion or by negatively affecting a business user's appearance ('dimming') which can include lowering its ranking. Restelli (2022) at113-116.

[39]Smorto (2020) at 56-57 and Di Sabato (2020) at 40.

[40]Information society services within the meaning of Article 1, paragraph 1, letter b), of Directive (EU) 2015/1535 of the European Parliament and of the Council - Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (OJ L 241, 17.9.2015, p. 1).

consumers"[41] and providers of online search engines, understood as "a digital service that allows the user to formulate queries in order to carry out searches, in principle, on all websites, or on all websites in a particular language, on the basis of a query on any topic in the form of a keyword, voice query, phrase or other input, and that returns the results in any format in which information relating to the requested content can be found"[42].

The direct beneficiaries of these rules are commercial users, understood as "private individuals acting in the context of their commercial or professional activities or legal persons offering goods or services to consumers through online intermediation services for purposes related to their commercial, entrepreneurial, craft or professional activity"[43].

Another distinctive feature of the P2B structure is its territorial applicability[44], corresponding to the place of establishment or residence in the Union of the beneficiaries and not of the providers of intermediation services or online search engines. If we consider that the companies required to comply with these rules, although providing services to EU citizens and businesses, are predominantly located outside the EU, it is clear that the absence of this provision would have effectively rendered the legislation in question useless[45].

The Regulation's attempts to achieve these objectives by specific requirements of transparency, fairness and sustainability of the contractual terms and conditions, effective tools for the out-of-court resolution of disputes.

To do this, the P2B imposes a series of rules designed to address the most problematic aspects inherent in the relationships between the parties, which were mentioned in the prior paragraph. The main instrument of the Regulation is transparency[46], which is the basis of all the provisions imposed for the drafting of the terms and conditions of service, the functioning of the ranking algorithms of the products or services offered or of the search results.

Having established the motivations and structural values of the P2B, we must now proceed to the analysis of the next paragraphs, which illustrate and examine in depth the most important themes of this regulation.

Terms and Conditions

As previously mentioned, platforms are market makers since they can create market opportunities, which in most cases are of crucial importance to business users. However, due to being so crucial, these opportunities are conversely a source of economic dependence on the platform[47]. This is more evident in the case of platforms identified as *gatekeepers*, i.e. digital giants that grant access to specific

[41]Art. 2 par 2, b - c.
[42]Art. 2 par. 3 - 5.
[43]Art. 2 par.1 P2B.
[44]Art. 2, par.2 P2B.
[45]Ruggeri (2021) at 78-81.
[46]Smorto (2020) at 37-45.
[47]In argument, see, widely, Stanzione (2022) at 1 et seq., Di Sabato (2020) at 1 et seq.

digital markets and which are specifically dealt with by the *Digital Market Act*. Given the importance of these latter, when we talk of *platformisation*, we are referring to the fact that this transformation involves all sectors of the economy.

The need for protection of commercial users is the basis of the P2B regulation, but it is also considered in the *Digital Service Act* and *Digital Market Act*[48] within the "Digital Single Market Strategy". In this framework, the goal of the P2B Regulation is to offer a system of safeguards for professionals who use online intermediation services, and to avoid the risk of unfair agreements and abuse of bargaining power[49]. As it is pointed out by Art. 1, in fact, the purpose of the Regulation is *"to contribute to the proper functioning of the internal market by laying down rules to ensure that business users of online intermediation services and corporate website users in relation to online search engines are granted appropriate transparency, fairness and effective redress possibilities*".

The P2B Regulation aims to protect business users in the case of terms and conditions unilaterally determined by the provider of online intermediation services. Nevertheless, as we can read in Recital 14, business users will not be deprived of the transparency and guarantees of P2B Regulation simply because they have the ability to successfully negotiate terms and conditions (henceforth T&C).

In order to ensure transparency and fairness of negotiations, the P2B Regulation aims to make the terms and conditions adopted by online intermediation service providers available and recognisable to business users. *Terms and conditions* are ruled in art. 3: the key words of this provision are accessibility, transparency and completeness.

Unilaterally defined by the providers of the online intermediation services, T&C have: to be drafted in plain and intelligible language (art. 3.1, let. a); to be easily available online (let. b); to set out the grounds for decisions to suspend or terminate or impose any other kind of restriction upon, in whole or in part, the provision of their online intermediation services to business users (let. c); to include information on any additional distribution channels and potential affiliate programs through which providers of online intermediation services might market goods and services offered by business users (let. d); to include general information regarding the effects of the terms and conditions on the ownership and control of intellectual property rights of business users (let. e). If T&C do not comply with these requirements, they are rendered null and void (art. 3.3).

Furthermore, intermediaries must inform their business users of the reasons for suspension, termination or any other restriction to the use of the services, jointly with other compulsory information. They must notify their professional users at least 15 days in advance of any modifications of their terms and conditions (art. 3.2)[50] and they must refrain from implementing retro-active changes to T&C (art. 8), providing a termination right to their professional users (art. 3.2), including information on the conditions under which business users can terminate the contractual relationship

[48]Chiarella (2023) at 33 et seq.; Allegri (2021) at 10 et seq.

[49]Nicotra (2019) at 1 et seq.; Ruggeri (2021) at 315 et seq.; Rumi (2023) at 27 et seq.

[50]Providers of online intermediation services shall grant longer notice periods when this is necessary to allow business users to make technical or commercial adaptations to comply with the changes (art. 3.2).

(art. 8, lett. b) and describing technical and contractual access to the information provided or generated by the commercial user which they maintain after the expiry of the contract between the provider of online intermediation services and the business user (art. 8, lett. c).

As for data regulation, art. 9 contains transparency rules regarding access to personal data or other data, without prejudice to the application of Regulation (EU) 2016/679, Directive (EU) 2016/680 and Directive 2002/58/EC (art. 9.3).

Pursuant to P2B Regulation, further elements have to be indicated in the platforms' T&Cs. Among these, we have to consider: art. 5 which indicates the parameters for ranking[51], art. 6 for a description of ancillary goods and services, art. 7 for the cases of differentiated treatment and art. 10 which requires intermediaries to indicate in their T&Cs the reasons for any limitations on the ability of business users to offer their products and services under different conditions through means other than platforms.

In DSA, we find further provisions regulating T&C: providers of intermediary services shall include information on any restrictions that they impose in relation to the use of their service in respect of information provided by the recipients of the service (art. 14). That information shall include information on any policies, procedures, measures and tools used for the purpose of content moderation, including algorithmic decision-making and human review, as well as the rules of procedure of their internal complaint-handling system. Providers of intermediary services shall inform the recipients of the service of any significant change to the terms and conditions. Pursuant to DSA, T&Cs are available to the public in an accessible, machine-readable format.

A specific provision is introduced for minors: where an intermediary service is primarily directed at minors or is predominantly used by them, the provider of that intermediary service shall explain the conditions for, and any restrictions on, the use of the service in a way that minors can understand (art. 14.3).

A special duty is imposed on providers of very large online platforms and of very large online search engines (art. 14, par. 5, 6), who shall provide recipients of services with a concise, easily-accessible and machine-readable summary of the terms and conditions, including the available remedies and redress mechanisms, in clear and unambiguous language. Very large online platforms and very large online search engines shall publish their terms and conditions in the official languages of all the Member States in which they offer their services.

Last but not least, in article 27 of DSA we find rules of recommender system transparency: T&C must explain, in plain and intelligible language, the main parameters used in their recommender systems, as well as any options for the recipients of the service to modify or influence those main parameters. These latter shall explain why certain information is suggested to the recipient of the service. They shall include, at least: (a) the criteria which are most significant in determining the information

[51]According to art. 2, n. 8 Reg. P2B, ranking means "the relative prominence given to the goods or services offered through online intermediation services, or the relevance given to search results by online search engines, as presented, organised or communicated by the providers of online intermediation services or by providers of online search engines, respectively, irrespective of the technological means used for such presentation, organisation or communication".

suggested to the recipient of the service; (b) the reasons for the relative importance of those parameters[52].

Effective Redress

P2B introduces a series of procedural requirements that providers of online intermediation services must comply with in terms of restricting, suspending and terminating the provision of their services to business users (art. 4). In particular, providers are required to communicate their decisions at least 30 days prior to the termination taking effect, with a statement of reasons, on a durable medium (art. 4.1 and 4.2). The indication of the reasons for the decision is of particular importance, because it allows users to understand those facts and to lodge complaints to providers (art. 11.1).

P2B Regulation and the DSA regulate internal complaint-handling systems based on principles of transparency and equal treatment. The aim of these two pieces of European legislation is to ensure that a significant proportion of complaints can be solved bilaterally by the provider of online intermediation services and the relevant business user in a reasonable period of time (Recital 37 and art. 11.1 P2B Regulation; art. 20 DSA).

Complaints concern, for example; (i) issues relating to decisions taken by providers; (ii) issues relating to failures to comply with the obligations of the P2B Regulation and DSA; (iii) technological problems and measures or behaviours adopted by providers and directly connected to the provision of their online intermediation services (art. 11.1 P2B Regulation).

Furthermore, according to art. 12 of P2B Regulation, providers of online intermediation services shall identify in their terms and conditions two or more mediators to reach an agreement with business users, out of court, of any disputes between the provider and the business user arising in relation to the provision of the online intermediation.

Providers should bear a reasonable proportion of the total costs of mediation in each individual case taking into account all relevant elements of each case, as we read in Recital 41. For this reason, considering the costs and the administrative burden associated with the necessity to identify mediators in T&C, small enterprises are exempted from this obligation, even if these enterprises are free to identify mediators in their T&C in compliance with the criteria of P2B Regulation[53].

Such provisions do not affect the rights of the providers of online intermediation services and of the business users concerned in the case to initiate judicial proceedings at any time before, during or after the mediation process. In turn, DSA also introduces out-of-court dispute settlement: with reference to the decisions adopted by the platform pursuant to art. 20.1 on complaints received, the recipients of the service may resort to certified extrajudicial dispute resolution bodies (art. 21).

Considering that various factors, such as limited financial means, a fear of retaliation and exclusive choice of law and forum provisions in terms and conditions,

[52]See Quarta & Smorto (2024) at 206.
[53]See Recital 41, P2B Regulation.

can limit the effectiveness of existing judicial redress possibilities, P2B Regulation allows organisations, associations representing business users or corporate website users, as well as certain public bodies set up in Member States, to take action before national courts in accordance with national law, including national procedural requirements (art. 14).

Furthermore, in Italy, complaints can also be lodged before the Communications Regulatory Authority (for violations of the P2B Regulation and the DSA) and Competition Authority (for violations of DMA). The first exercises its competences in the area of P2B matters pursuant to Law No. 1781 of 30 December 2020, which entrusted it with the task of ensuring "the adequate and effective application" of the P2B Regulation[54]. In turn, the Italian Competition Authority (AGCM) is the national authority designated for the enforcement of the Digital Market Act pursuant to Law 214 of 24 February 2023.

Conclusions

The existence of digital platforms has advantages for companies, and indirect benefits for consumers in terms of increasing supply and improving market competitiveness. Thanks to platforms, costs and space-time distances between companies and customers are reduced.

As highlighted in the Italian Communication Regulatory Authority Report of July 2024, aimed at assessing the implementation of EU legislation in P2B relationships[55], despite the progress in the application of the legislation, with regard to the transparency of contractual conditions and the accessibility of protection tools, the results, in general, although appreciable, still present a fair amount of potential for improvement in the face of a not entirely satisfactory experience of commercial users who use online intermediation services to carry out their craft, commercial and professional activities.

In the Report, we read that in the side of commercial users and owners of corporate websites, a widespread difficulty is seen in finding the T&Cs, which are not always written in simple and understandable language and placed in areas of the website that are not immediately identifiable. In the meantime, critical issues are registered as for the interaction with the platforms through the internal complaint management system, also due to the use in most cases of automated complaint management tools, as well as the general unavailability of adequate support in relation to relevant cases connected to the limitation, suspension or termination of the online intermediation service. Regarding other user protection mechanisms, the use of mediation remains limited, highlighting the lack of familiarity and awareness among commercial users in utilizing alternative dispute resolution, despite it being provided for in the legislation.

[54]Furthermore, Italian AGCOM has been appointed Digital Services Coordinator for the application of the DSA in Italy, pursuant to Article 15 of Legislative Decree No. 123 of 15 September 2023, as converted, with amendments, by Law No. 159 of 13 November 2023.

[55]https://www.agcom.it/sites/default/files/media/allegato/2024/P2B_Report%202024_pubblicazione_0.pdf.

The permanent asymmetry in relationships with platforms, both on the economic and informational side, remains evident and strong. Nevertheless, it is also clear that regulatory interventions will lead step by step to a greater awareness of contractual protections, as well as of the possibilities of access and use of data, which are so important for the development of business activities. From this perspective, the final result is also an indirect benefit to consumers, as the P2B regulatory framework not only governs business negotiations but also helps standardize consumer contracts, leading to a fairer and more accessible digital market.

References

Allegri, M.R. (2021). 'Il futuro digitale dell'Unione europea: nuove categorie di intermediari digitali, nuove forme di responsabilità', in *Rivista Italiana di Informatica e Diritto* 2021(2):7-23.

Alpa, G. (2021). 'Il mercato unico digitale', in *Contratto e impresa/Europa*, 2021(1):1-24.

Chiarella, M.L. (2023). 'Digital Market Act (DMA) and Digital Service Act (DSA): New Rules for the EU Digital Environment', in *Athens Journal of Law*, 9(1):33-58, and in Frenkel, D.A. (ed.) (2023), *A Current Anthology of Law*, Athens; Atiner. pp.33-57.

Di Sabato D. (2020), 'Il ruolo delle piattaforme digitali nello svolgimento delle attività economiche in rete', in *Annali della Facoltà Giuridica dell'Università di Camerino – Studi*, 2020: 9, 1-42. https://afg.unicam.it/sites/afg.unicam.it/files/Di%2520Sabato%2520-%2520AFG%25202020_0.pdf).

Foglia, A. (2024). 'L'equità nelle relazioni contrattuali asimmetriche secondo il Regolamento (UE) 2019/1150', in *Accademia – Rivista dell'Associazione civilisti italiani*, 5:679-693.

Forlan, F. (2019). 'Professionisti, consumatori e piattaforme online: la tutela delle parti deboli nei nuovi equilibri negoziali', in *Medialaws*, 3: 162-176.

Nicotra, M. (2019). 'Piattaforme online, le nuove regole UE per gli utenti commerciali', in www.agendadigitale.it, 19 September 2019.

Pais, I. (2019). 'La platform economy: aspetti metodologici e prospettive di ricerca', in *Polis* 1:143-162.

Palmieri, A. (2019), Profili giuridici delle piattaforme digitali. La tutela degli utenti commerciali e dei titolari di siti web aziendali, Turin: Giappichelli.

Pardolesi, R. (2021), 'Piattaforme digitali, poteri privati e concorrenza - digital platforms, private powers, and competition', in *Diritto Pubblico*, 3: 941 - 960.

Quarta, A. & G. Smorto (2024). *Diritto privato dei mercati digitali*. Florence: Le Monnier.

Restelli, E.R. (2022). *Le piattaforme digitali. Dall'intermediazione all'impresa*, Milan: Giuffrè.

Ruggeri, F. (2021). 'Regole di trasparenza e rapporto tra imprese nei mercati digitali: il Regolamento (UE) 2019/1150 sull'intermediazione online e i motori di ricerca', in *Il diritto dell'informazione e dell'informatica* 2:315-344.

Rumi, T. (2023). 'Il Regolamento UE sui rapporti P2B: le nuove regole sulla trasparenza contrattuale e gli strumenti alternativi di risoluzione delle controversie' in *Cadernos de Dereito Actual*, 21:27-48.

Smorto, G. (2020). 'La tutela del contraente debole nella platform economy dopo il Regolamento UE 2019/1150 e la Direttiva UE 2019/2161 (c.d. Omnibus)', in V. Falce (ed.) *Fairness e innovazione nel mercato digitale*, Turin: Giappichelli.

Stanzione, P. (2022). *I poteri privati delle piattaforme e le nuove frontiere della privacy*. Turin: Giappichelli.