**P2B Regulation EU Ranking Transparency guidelines
HOTREC Checklist of key requirements for online intermediaries**

**Background**

These [Guidelines on Ranking Transparency](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020XC1208%2801%29) aim to **facilitate the compliance of providers of online intermediation services and providers of online search engines** with, and the enforcement of, the requirements provided in Article 5 of [Regulation (EU) 2019/1150](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019R1150) on promoting fairness and transparency for business users of online intermediation services (P2B R5egulation).

In line with Article 5(7) and recital 28 of the Regulation, these Guidelines also aim to assist providers in applying the requirements and **help optimise the manner in which the main parameters determining ranking are identified and presented to business users and corporate website users**.

These guidelines are **not legally binding**, it is ultimately for the EU Courts to interpret the requirements. In addition, the guidelines are not be applied mechanically, but rather with due consideration to the relevant facts and circumstances at issue in each individual case.

The guidelines can be revised by the Commission in light of future developments.

**Relevance for HOTREC members**

Online providers such as OTAs and search engines design their ranking methods, including proprietary algorithms, in different ways. These approaches to ranking are frequently adapted and in general not disclosed. From the consumers’ perspective, the quality of search results may differentiate services and, therefore, the detailed functioning of ranking methods may be a provider’s competitive edge or trade secret. Businesses trading online therefore do not always know the reasons for their performance in ranking or whether and how they could perform better, potentially with the help of paid ranking, despite their ability to reach customers critically depending on this knowledge.

**Requirements for online intermediaries and search engines: a checklist**

Generally speaking, the aim of the Guidelines is:

* to help online platforms make the right information available to business users so they can consider how best to increase and manage their online visibility, enabling consumers to receive the highest quality goods and services.
* provide support for the adequate and effective enforcement of the transparency requirement to ensure online platforms are acting fairly in their ranking practices

This should be ensured by the **provision of descriptions given by providers in their terms and conditions (T&Cs)** that should provide real added-value to business users. The description to be given by providers aims to improve predictability and help users improve the presentation of their goods and services, or a characteristic of those goods and services. The description to be provided **has to go beyond a simple enumeration of the main parameters and provide at least a ´second layer´ of explanatory information**. Predictability entails that providers determine ranking in a non-arbitrary manner.

There are of course **limits to what platforms are required to disclose.** As such, online intermediaries will not be required to:

* **Disclose the detailed functioning of their ranking mechanisms, including algorithms;**
* **Describe every single ranking parameter** in order not overwhelm users with too lengthy or complicated descriptions
* **Provide the exact weighting** of ranking parameters.
* **Limit the choice of the ranking parameters that providers can use**
* **If paid ranking and advertising do count not among the ‘main parameters’, transparency does not apply to such advertising.**
* **Mechanisms used to taken to avoid third party bad faith manipulation of ranking results** **cannot be revealed in detail** without potentially undermining their purpose and effectiveness.
* It is ultimately up to the service provider to determine whether differentiated rankings per service need to be provided where the service provider offers different services.
* The only exceptions to the notice period of 15 days for notifying changes to T&Cs are where the provider is subject to a legal obligation which requires it to change the T&Cs faster or; has exceptionally to change the T&Cs to address an unforeseen and imminent danger related to defending the online intermediation services, consumers or business users from fraud, malware, spam, data breaches or other cybersecurity risks. The notice period does not apply to changes that are merely of an editorial nature (i.e. changes that do not alter the content or meaning of terms and conditions).

These requirements translate under the Guidelines into a complex and detailed description of what kind of information online intermediaries and search engines are required to provide, as well as limits to the requirements. **The following table attempts outline a checklist to clarify how the guidelines translate into concrete requirements for online intermediaries and search engines** and outlines (non-binding) examples of how online intermediaries can translate the ranking requirements into concrete approaches or tools at the disposal of business users.

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|  | Requirements for online service providers  | Suggested approaches for online intermediaries |
| Algorithm transparency | **Provide a description that gives users an adequate understanding of whether – and if so, how and to what extent – the ranking mechanism takes account of: (a) the characteristics of the goods or services offered through the provider’s service; (b) the relevance of those characteristics to the consumers using that service** |  |
| Terms and conditions (T&C) | **Must be easily available to business users at all stages** of their relationship, including before they enter into a contract with those providers. Therefore, all required information should also be available to prospective business users.**Describe all relevant information in the T&Cs**, in order to improve predictability and help users improve the presentation of their goods and services. Must be drafted in **plain and intelligible language.**Take account of the nature, technical ability and **needs of ‘average’ users** of a given service, which may vary considerably between different types of services.**Adapt the description given if major alterations to the ranking mechanisms** leading the ‘main parameters’ to change. | Complement the T&Cs by taking steps that direct business users to the exact location of the description and/or include it in Q&A sections, tutorials, guidelines, pop-up windows, video messages or in other forms. However, the information should not be inconsistent nor spread out over different tools or media, if that has the effect of making it no longer easily available or plain and intelligible.Providers could consider establishing a single touchpoint (for example in a user ‘dashboard’) that could reference or index all the relevant informational tools available to explain ranking transparency.Providers may need to regularly consider whether they still meet this legal requirement, or whether the descriptions need to be updated. Providers are free to devise their own systems to determine whether, when and how they will do this, considering elements such as how frequently changes are made, the effects of any such changes and when experiments (e.g. A/B testing) and other techniques (e.g. machine learning) used on their services may trigger changes to the ‘main parameters’ determining ranking. |
| Ranking parametrers | **Determine ranking in a non-arbitrary manner.****Provide a description that goes beyond a simple listing of the main parameters**, and provide at least a ´second layer´ of explanatory information (e.g. the company’s ‘thought process’ that was used for identifying the ´main parameters´, as a way to also derive the ‘reasons for their relative importance’).**Cannot refuse to disclose the main parameters** based on the sole argument that it has never revealed any of its parameters in the past or that the information in question is commercially sensitive.**Descibe external factors to the given online intermediation services** (e.g. hotel star ratings, ‘brand appeal’) if relevant for ranking as ‘main parameters’. **Describe temporary changes, randomness or personalisation** insofar as such factors constitute main ranking parameters.**Provide a description of default settings, sorting & filtering mechanisms,** if they are to be considered as‘main parameters’ themselves, for example where their use by consumers is very frequent. If so, it can be important for business users to understand whether the ranking after application of the filter is based on all offers or if the ranking depends on the offer of goods or services meeting certain criteria for inclusion. Given the increased importance of the filter in specific filtering mechanisms (e.g. price or review score), other parameters that apply besides the filter might equally increase in importance in terms of the weighting applied to them relative to the situation where no filter is applied.**Identify main parameters based on ´actual data on the relevance of the ranking parameters used´.****Capture to some extent the inherently dynamic nature** of (typically algorithm-driven) ranking in a more static description. | To determine which set of parameters are to be considered the ‘main’ ones, providers could consider what drove the design of the algorithm in the first place. For example, whether it was driven by a desire to ensure that consumers found goods or services that were local, cheap, of high quality, etc. As a best practice, this company-internal reflection could be combined with giving thought to what the provider considers is the top type of result on its service. Similarly, the provider could consider what would make the services’ consumers most satisfied.Providers could consider what would be most useful to know for the users concerned. A best practice that can help users understand how ranking functions is to examine the more unexpected elements that determine ranking. These could also be factors that a user may assume are irrelevant as they are unrelated to the quality of the good or service they offer through the service (e.g. users’ privacy settings).When it comes to external ranking factors, it cannot be excluded that it may in certain cases be ‘surprising’ to some business users that certain external factors that would appear to be of great significance in view of the nature of the service are not taken into account in determining ranking. The description of the reasons for the relative importance of the main parameters, should be sufficiently clear so that users can understand that those other factors are not taken into account in ranking. |
| Paid ranking and advertising | **Describe the possibility for users to influence ranking against any direct or indirect remuneration, where such possibility constitutes a ‘main parameter’**Provide: 1) an explanation of any possibility for business users to actively influence ranking against remuneration; and 2) an explanation of the relative effects of such remuneration on ranking.**Interpret ‘remuneration’ in the broader sense,** encompassing direct or indirect remuneration, including acceptance by a business user of additional obligations of any kind which may have this as its practical effect |  |
| Provision of multiple services | **Provide in principle a separate description for each service covered by the Regulation** in cases where providers offer multiple services as part of a single corporate structure. | Users, competent authorities and courts should base themselves on an individual, case-by-case assessment as to whether or not those requirements are complied with. |
| Integration of business users’ offers on third-party websites (e.g. OTA offer on meta-search engine) | Assess whether and how the presence of these offers has to be included in a description. Depending on the situation, **one or several such descriptions may be required,** and the presence of these offers may have to be described in different ways.Independent third-party providers that collect user reviews of businesses and some providers **may consider the activities or the presence of business users on third party services an indicator of quality or relevance of business users** on the online intermediation services in question. Where that is the case, and the relevance of this factor for ranking is such that it is to be considered a ‘main parameter’, those providers should inform users that, and how, this factor is taken into account in ranking. |  |
| Relationship with ancillary services | In certain cases, ranking mechanisms function so that the use by users of ancillary services of the same provider can affect their ranking. This situation can be an example of indirect remuneration, which requires an additional description. Where the use of ancillary services is a main parameter, providers have to explain, with an appropriate degree of detail, so that the users can decide whether to use such ancillary services, knowing that these ancillary services, for example, offer not just ease (i.e. all being available from the same provider in a ‘one-stop-shop’) but that their use may be important in optimising sales. |
| Use of providers’ technical tools | Where providers offer technical tools to users, possibly in return for remuneration, and can as such be considered as a ‘main parameter’, **providers should explain whether the effect on ranking is merely due to the insights gained, or whether it is the fact they use the analytics tool that is also taken into account. In which case, the use of the analytics tool could be a form of indirect remuneration.** |
| Personalisation and browsing history | Where this is a main parameter, an explanation of the use of personalisation, its key features as well as its impact on ranking, including the volatility (i.e. the extent of the difference in ranking for different consumers), could help improve predictability. This could require that providers analyse the long list of factors that are used for personalisation, such as consumers’ personal profiles, interests, search behaviour, their actual geographic location, the time of day the search takes place, their use of cookie blockers or other technical tools and more generally, the wealth of data held on the specific consumer as well as their use of default settings (i.e. their ability to undo default setting or to apply filtering mechanisms.  | User’s history: providers could consider how and if so, to what extent certain factors that are not directly related to the goods or services that a user offers through the services in question, such as a user’s history or past performance, affect ranking. |
| User reviews | **Where consumer reviews are a ‘main parameter’, providers should describe this with sufficient clarity.**  | For example, it could be explained that the reviews are generated on the relevant online intermediation service, or, it may be reviews hosted outside those services. In such cases, it can also be important for users to know what, if any, steps are taken to verify the veracity of such reviews |
| Changes and experiments | Providers should not assume that the temporary nature of changes made to parameters, weighting or other features of ranking necessarily means that the description does not need to be changed. When providers alter their “standard” ranking methods in such cases, for example, by giving more weight to certain parameters (e.g. ‘delivery speed’, ‘price’ or other notions such as ‘brand appeal’ or ‘quality’, possibly combining several factors), adding new ones or suppressing some, and these modifications affect the main parameters, providers should adapt the description. If providers use experiments, including A/B testing of changes or evolving fraud fighting mechanisms, they need to consider on a case-by-case basis whether it requires a change to the description. If **machine learning** is a ‘main parameter’ then it must be described ‘statically’ even if it is dynamic.  | As a general rule for notifying changes due to experiments, providers could consider elements such as the frequency and impact of the experiments, as well as the size of the test audience, or of the geographic region affected by the testing. In cases where the experiments are ‘live’, providers should reflect on whether experimentation is conducted in a genuinely isolated environment.It may also be good practice to capture in the description any ‘regular’ dynamic features of ranking.If machine learning is considered as a main parameter, the description may include whether it affects all main parameters equally and for example, give an indication of the timing and frequency with which machine learning may lead to ‘main parameters’ changing. |
| T&C updates | **Intended changes to T&Cs must be notified to business users at least 15 days before applying them.** It is the legal minimum requirement. Longer notice periods are required if necessary to allow business users to make technical or commercial adaptations to comply with the changes in question. | Providers may wish to ensure that the changes to the description are easily identifiable. Best practices in this regard could include keeping a dedicated page that gives access to previous versions of the descriptions or keeps a record of the changes made over time. Separately, a best practice that can help business users obtain an adequate understanding is to explain the practical implications of the changes.  |
| Bad faith manipulation | Ensure they can act against ‘bad faith manipulation of ranking.**Inform about the existence of existence of mechanisms aiming to avoid ‘bad faith manipulation’** and provide high-level information about how they can influence ranking. | Providers have several safeguards for their ‘commercial interests’ (e.g. the Trade Secrets Directive). Providers can also act to address bad faith manipulation of ranking by third parties, including the risk of deception of consumers. Therefore, a balance needs to be struck between countering manipulative and harmful behaviour on the one hand and the transparency required on the other hand. |
| Illegal content | Where providers take measures to tackle illegal content online, they need to consider the effect that these measures may have on ranking.  | Providers should consider what information about the types and prevalence of illegal content on the service in question could help business users better understand the functioning of the ranking mechanisms in question. |

**Feedback from Members**

Discussions on the effectiveness of the P2B Regulation and the quality of information provided by online intermediaries and search engines as a result of the ranking Transparency Guidelines will be assessed by the European Commission for future reviews or considerations.

Feedback from HOTRCE Members regarding the application of the ranking transpranecy guidelines by key platforms such as OTAs and search engines will be of great value to feed into these forecast reviews.