



Model Rules on Online Platforms

Report of the European Law Institute



The ELI Model Rules on Online Platforms

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Overview

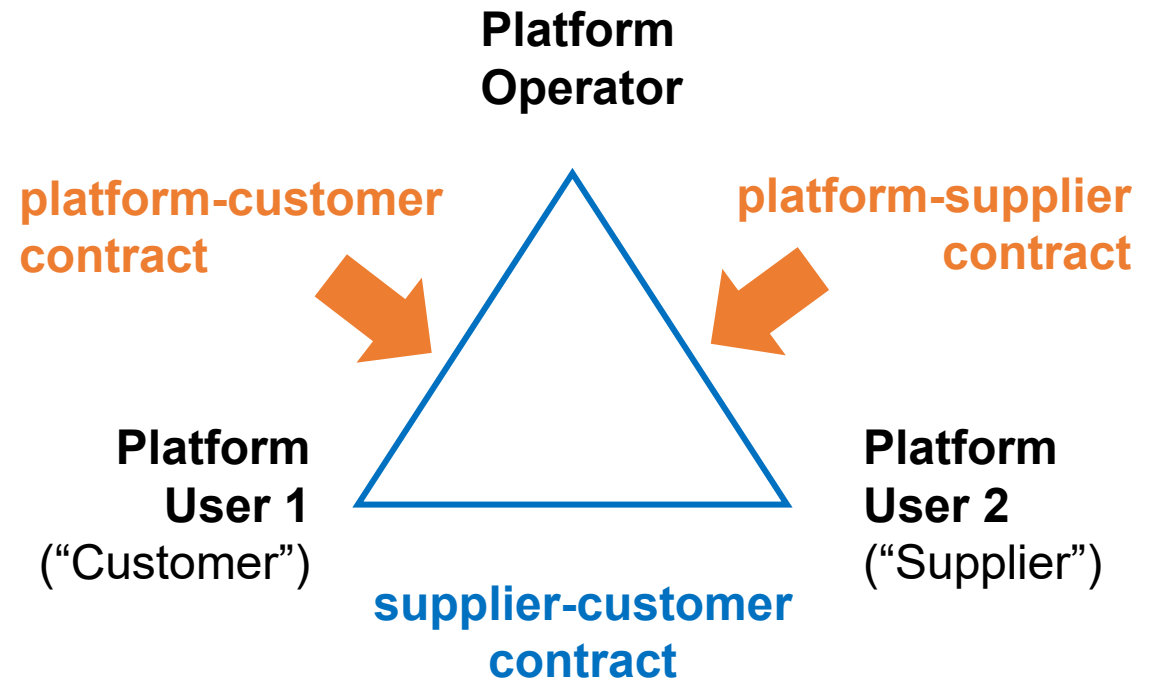
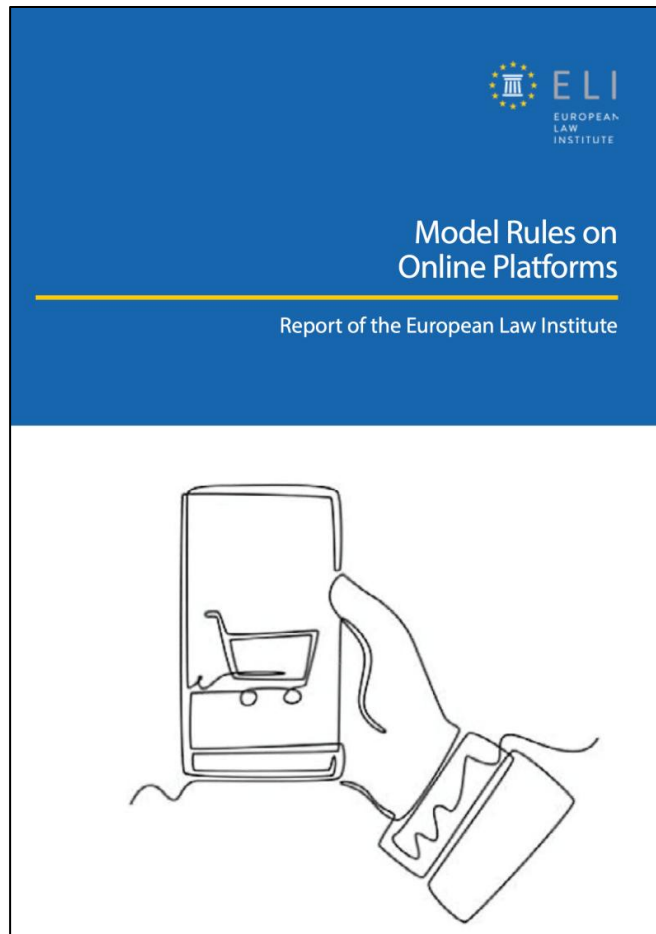
- The ELI Project
- Transparency
- Fairness
- Liability

The ELI Project

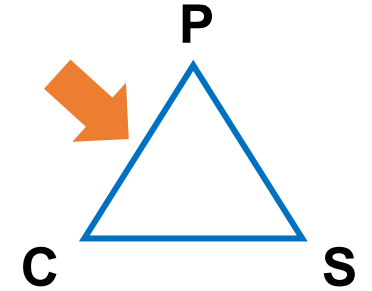


- Project of the **European Law Institute** (founded in 2011, 1.800 members)
- International Working Group: 25 researchers from 10 countries
- Model Rules: 7 Chapters, 28 Articles
- Adopted by ELI Membership in March 2020

The ELI Project



Transparency



Duty to inform about the **role of the platform** (Art. 13)

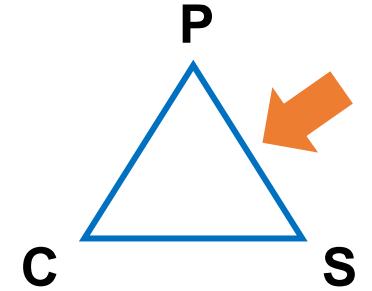
- Platform operator must inform customers in a prominent manner that they will be entering into a contract with a third-party supplier and not with the platform operator

**In case of breach:
Liability under Art. 19**

Duty to inform about the **supplier** (Art. 14)

- Information about the legal status of the supplier (trader/non-trader)
- Information about the identity of the supplier

Transparency



Duty to inform suppliers about **key elements** of the platform-supplier contract (Art. 15)

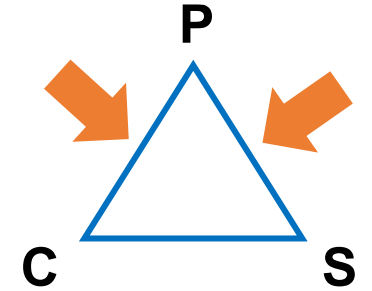
- Contractual roles, fees, payment mechanisms, communication channels, termination etc.

Duty to provide suppliers with **technical facilities** for informing customers (Art. 16)

- Enable suppliers to fulfil their transparency duties towards customers under product safety law etc. (cf. Art 31(1) Regulation (EU) 2022/2065)

**Interface
design duty**

Transparency



Transparency of rankings (Art. 4)

- Duty to inform about main parameters determining the ranking and the relative importance of these parameters
- Duty to disclose 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

Transparency of recommender systems and rankings

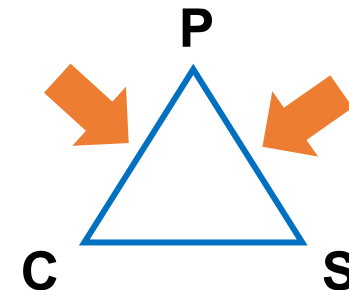
Art. 5 Regulation (EU) 2019/1150

Art. 27 Regulation (EU) 2022/2065

Fairness

Unilateral changes of the platform-user contract (Art. 12)

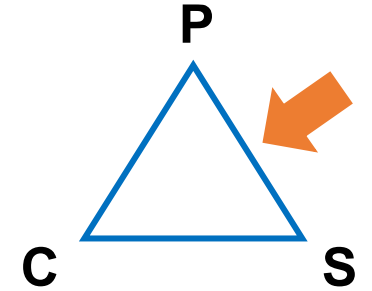
- Reasonable notice of any change of contract terms (at least 1 month before the change takes effect)
- Duty to explain the changes
- Platform users have a right to terminate the contract in case of a change of contract terms



**No substantive fairness test,
only procedural requirements**

Art. 3 Regulation (EU) 2019/1150

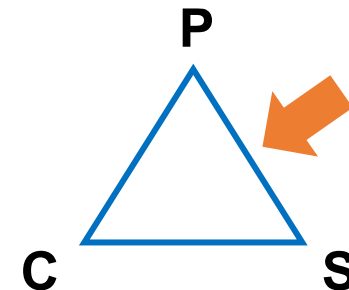
Fairness



Termination of the platform-supplier contract (Art. 17)

- Termination by platform operator:
gradually increasing notice period
 - 1st year: 30 days
 - 2nd year: 60 days
 - 3rd year: 90 days
- Contractual agreements on longer notice periods must be symmetrical and of appropriate length
- Immediate termination for compelling reasons

Fairness



Restriction and suspension of services under the platform-supplier contract (Art. 18)

- Notice requirement and duty to give reasons
- Where a restriction has an effect similar to that of a termination, Art. 17 (termination) applies.

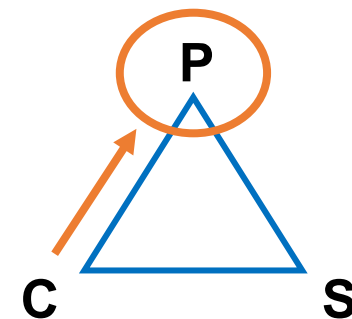
No substantive fairness test, focus on procedural fairness

Duty to communicate

Linked to complaint handling mechanisms

Art. 4 Regulation (EU) 2019/1150

Liability



Liability of the platform operator for **lack of transparency** (Art. 19)

- If the platform operator fails to inform the customer in a prominent manner that he will be entering into a contract with a third-party supplier...
- ...the customer can exercise the rights and remedies available against the supplier under the supplier-customer contract also against the platform operator.

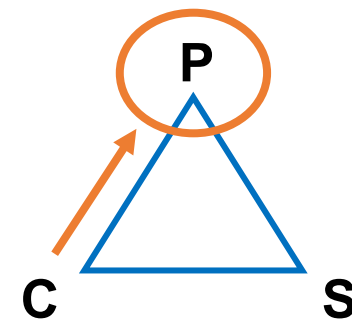
Liability for violation of a duty of transparency

No interference with general contract law

Additional rights and remedies against the platform operator

CJEU, C-149/15 – *Wathelet*

Liability



Liability of the platform operator with **predominant influence** (Art. 20)

- 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.

Even if the contractual roles are made transparent

Reliance-based liability

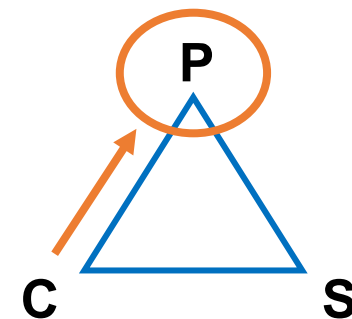
No interference with general contract law

Additional rights and remedies against the platform operator

Bolger v. Amazon.com
(2020) 53 Cal. App. 5th 431

CJEU, C-434/15 – *Uber Spain*

Liability



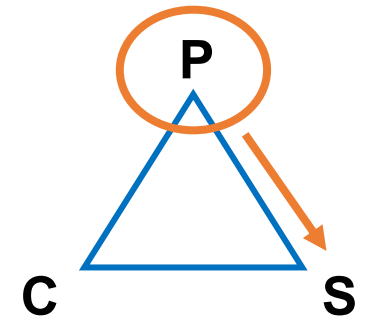
Liability of the platform operator with **predominant influence** (Art. 20)

- 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.

List of indicative criteria for assessing the platform's predominant influence:

- Supplier-customer contract is concluded exclusively via facilities provided on the platform
- Platform withholds the identity of the supplier until the contract is concluded
- Platform can withhold payments made by the customer to the supplier
- Terms of supplier-customer contract are essentially determined by the platform
- Price paid by the customer is set by the platform
- ...

Liability



Platform operator's **right of redress** against the supplier (Art. 25)

- If the platform operator has become liable under Art. 19 or 20 towards a customer for a supplier's misleading statements or a supplier's failure to perform the supplier-customer-contract...
- ...the platform operator has a right to be indemnified by the supplier

Right of redress

- Art. 20 Digital Content Directive (EU) 2019/770
- Art. 18 Sale of Goods Directive (EU) 2019/771

Further reading

- European Law Institute, Model Rules on Online Platforms, 2020 <https://www.europeanlawinstitute.eu>
- Christoph Busch et al., The ELI Model Rules on Online Platforms, 9 Journal of European Consumer and Market Law 2020, 61-70 <http://dx.doi.org/10.2139/ssrn.3870296>
- Christoph Busch, Platform Regulation Beyond DMA and DSA: Which Role for the P2B Regulation? 12 Journal of Antitrust Enforcement 2024, 201-206, <https://doi.org/10.1093/jaenfo/jnae016>
- Duncan Fairgrieve, Christoph Busch et al., Product Liability and Online Marketplaces: Comparison and Reform, 73 International and Comparative Law Quarterly 2024, 477-504, <https://doi.org/10.1017/S0020589324000046>



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