EJPLT

European Journal of Privacy Law & Technologies • 2020/2 • ISSN 2704-8012

The vulnerable business user: the asymmetric relationship between the business user and the platform

SILVIA MARTINELLI
Researcher Fellow at the University of Milan
Ph.D
Lawyer

Abstract

The Paper analyses the weakness of the business users in multimedia habitat and, in particular, in the platform economy. It underlines the vulnerabilities of business users, unprotected by consumer law and data protection, in a market characterized by strong dominant position, high network effects and high switching costs.

Firstly, it focuses on the governance and regulation power of the platform (and the weaker counter-part bargaining power of the business users) and on the prevision of the measures of suspension and termination of the services by the platform.

Secondly, the paper analyses ranking algorithms regulation and differentiated treatment with regard to the interest of business users.

Finally, it moves to data law and data access for analyzing article 9 of the Regulation 1150/2019 and suggests the introduction of further instruments to protect the business user and guarantee, at the same time, some improvement for competition.

Keywords: Business user - platform - asymmetries - contract - data - fairness - user - data portability - data access

Summary: 1. The vulnerable business user. – 2. The power of the platform: from the regulation to the suspension and termination of the services. – 3. Ranking algorithms and differentiated treatments. – 4. Data and business users: how to unlock business data?

1. The vulnerable business user.

In the analysis of the positions of vulnerability in social networks and multimedia habitats, we usually think about consumers, data subjects and minors. Nevertheless, we assist to the emersion of a new category of weaker user, the "business user", due to the lack of balance in the relationship with social networks and platforms, where the bargaining power of the business user is almost always very small[1].

The new "multi-lateral" digital services (i.e. Airbnb, Amazon, Uber) are characterized by high market concentration and the role of these platforms is to enable users' interactions and extract value from them. The expression "multi-sided market platform" is used to define the platforms that serve at least two distinct groups of users who need each other; the core

[1] European Commission, *Study on Contractual Relationships between Online Platforms and Their Professional Users* (2018); http://ec.europa.eu/newsroom/dae/document.cfm?doc_id=51624, accessed on 2.11.2020; G Smorto, 'La Tutela Del Contraente Debole Nella Platform Economy' (2018) 158 Giornale di diritto del lavoro e di relazioni industriali.

business of the platform is allowing the meeting and facilitating the interactions between the distinct groups. There are, therefore, at least two different groups of users, who are kept in contact by the platform, which creates the match thanks to data and algorithm and reduces information and transaction costs. Without the platform, these meetings would not have taken place (the platform is also called "catalyst"[2]) and for business users it becomes crucial in order to meet potential customers[3].

The business model of social network is based on the analysis of the data generated by the interaction between users to create, with data analysis and algorithms, the perfect match with another group of users, the advertisers (for example, Facebook). In the platform economy, the core interaction[4] is the transaction between a vendor/provider of a service and a customer (for example Amazon, Uber, Airbnb). In these cases, strong network effects which reduce competition and determine the affirmation of strong dominant positions can be observed[5]: a) for the "direct network effect" the value of joining the platform for the individual user increases with the number of users ("if all my friends are there, I want to be there"); b) for the "indirect network effect", more users on one side of the platform attract more users on the other side of the platform ("if my consumer/target is there, I want to sell/promote my products there"); c) for the "big data effect", or "big data advantage", the availability of a large amount of data increase the possibility to improve algorithms and create better matches[6]. The existence of strong direct and indirect network effects increases switching costs[7] and platform lock-in and creates and increases the current dominant positions. In a market characterized by few actors, it is crucial for the business users to be present in these platforms and their bargaining power decrease.

The business user is a "trader"[8] and he can be both a natural person or a legal person. The "trader user" usually is in a weaker position behalf the platform: as a customer, he cannot benefit from the European consumer protection; with regards to data, he is not always qualified as a data subject. The definition of personal data applies only to natural person and, therefore, it would apply only for traders who are a natural person[9].

The European Regulation 1150/2019 "on promoting fairness and transparency for

---

[2] D S Evans and others, 'Platform Economics: Essays on Multi-Sided Businesses' [2011] Competition Policy International 459.

[3] Regulation 1150/2019, whereas 2; European Commission (n 1).

[4] G G Parker, Marshall W Van Alstyne and S P Choudary, *Platform Revolution. How Networked Markets Are Transforming the Economy and How to Make Them Work for You* (W W Nothon & Company 2016); Sangeet Paul Choudary, *Platform Scale* (Platform Thinking Labs 2015).

[5] K A Bamberger and O Lobel, 'Platform Market Power' (2017) 32 Berkeley Technology Law Journal 1051; Evans and others (n 2); M E Stucker and A P Grunes, *Big Data and Competition Policy* (Oxford University Press 2016); J S Frank, 'Competition Concerns in Multi-Sided Markets in Mobile Communication' in R Podszun and others (eds), *Competition on the Internet* (Springer 2014); OECD, 'Rethinking Antitrust Tools for Multi-Sided Platforms' 228 <www.oecd.org/competition/rethinking-antitrust-tools-for-multi-sided-platforms.htm>, accessed on 2.11.2020; D Mandrescu, 'Applying EU Competition Law to Online Platforms: The Road Ahead - Part 1' (2017) 38 Eclr 353; M Katz and J Sallet, 'Multisided Platforms and Antitrust Enforcement' (2018) 127 Yale Law Journal 2142.

[6] M E Stucker and A P Grunes (n 5); European Commission, 'Enter the Data Economy' [2017] EPSC Strategic Notes 1 <https://ec.europa.eu/epsc/publications/strategic-notes/enter-data-economy_en>, accessed on 2.11.2020.

[7] "Switching costs" are the barrier costs that users may face when seeking to switch to another platform and they increase if there are some network effects.

[8] Directive 83/2011, art. 2, para 1, n. 2.

[9] S Martinelli, 'Commento All'art. 4 Del GDPR (Definizioni)' in A Barba and S Pagliantini (eds), *Commentario del Codice Civile (diretto da E. Gabrielli)* (Utet 2019).

business users of online intermediation services"[10] define the business users as "any private individual acting in a commercial or professional capacity who, or any legal person which, through online intermediation services offers goods or services to consumers for purposes relating to its trade, business, craft or profession"[11]. The new definition is introduced in order to determine the scope of the Regulation, whose aim is the promotion of "fairness and transparency for business users of online intermediation services". Hence, the Regulation applies only to traders on the offer-side.

The vulnerability of the business user occurs both on the demand side and on the supply side. However, the issue is more persistent on the supply side, since the platform is always designed for the benefit of the final customer, the user on the demand side[12].

The platform economy, also called "gig economy", enables new forms and possibilities to offer goods and services: "everyone can be employer of themselves". At the same time, individuals with no contractual power and without experience and knowledge of the sector often start an activity and assume the relative risks, without social protection and with different degrees of real autonomy.

The Regulation 1150/2019 introduces new rules for online intermediaries and search engines which offer services to users established in the Union. These measures are related to: conclusion of the contract and unilateral changes, measures for the suspension and termination of the service, ranking and transparency on the parameters, different treatment between users and access to data. In addition, the Regulation requires the implementation of an internal complaints management system, introduces mediation and the possibility, for organizations and associations that have a legitimate interest, to take action before competent national courts in the Union "to stop or prohibit any non-compliance by providers of online intermediation services or by providers of online search engines, with the relevant requirements laid down in this Regulation"[13].

This legislative instrument can only be a first step. In particular, access to data, suspension/ limitation measures and the use of algorithms and ranking systems require further analysis efforts and the development of tools to protect business users in respect of big platforms and the market.

2. The power of the platform: from the regulation to the suspension and termination of the services.

All activities and interactions between users which take place in the platform are subject to the contractual regulation unilaterally provided by the provider of the platform. The contractual regulation creates a "closed environment"[14] where users enter into a relationship through the communication possibilities technically offered by the platform and subject to the rules that it provides in the exercise of its private autonomy.

The platform builds this environment, chooses the rules, monitors their compliance, decides the application of sanctions in case of violation and executes the decisions. The whole technical structure of the platform (software, data and algorithms), the rules that regulate it and the control it carries out, together with its users and their data, establish the

[10] C Cauffman, 'New EU Rules on Business-to-Consumer and Platform-to-Business Relationships' (2019) 26 Maastricht Journal of European and Comparative Law 469; A Palmieri, *Profili Giuridici Delle Piattaforme Digitali* (Giappichelli 2019); C Twigg-Flesner, 'The EU's Proposals for Regulating B2B Relationships on Online Platforms – Transparency, Fairness and Beyond' (2018) 7 European Consumer and Market Law 222.
[11] Regulation 1150/2019, art. 2, para 1, n. 2.
[12] G G Parker, M Van Alstyne and S P Choudary (n 4).
[13] Regulation 1150/2019, art. 14, para. 1.
[14] T Rodriguez de las Heras Ballell, 'The Legal Anatomy of Electronic Platforms: A Prior Study to Assess the Need of a Law of Platforms in the EU' (2017) 3 The Italian Law Journal 8.

nature of the platform. Those elements are able to distinguish one platform from the others, to determine success or failure, and to constitute the service it offers. These aspects make the platform attractive and efficient. It plays not only an organizational role, but also a role of governance of the entire ecosystem.

The measures of suspension, termination or limitation of the services are the main sanctions applied by the platform. They apply to all types of users and they sanction contractual breaches. These breaches can be referred also to the violation of the "community rules", settled out for regulating the relationships between the users, or to the failure or incorrect provision of service of the supplier-user to provide the service to the customer-user. The provision of the service offered by the supplier is evaluated by customers using reputational feedback system and the problems occurring in the provision can be signaled to the platform using the "claim" system. Restrictions on the possibility to use the services provided by the platform are applied in case of a high number of "claim" unsolved or of low scores on the reputational feedback system. Furthermore, the platform has the possibility to sanction the supplier-user for a variety of conducts with different kinds of limitation: for example, Amazon, in case of delays in the delivery of the products, allows the sale only by relying on the shipping service provided by Amazon itself.

The lack of transparency in these sanctioning systems and the importance of the platform for the supplier-user generate an opaque system that can lead to abuse. The European Legislator has introduced article 16 of the Directive 770/2019 for consumers and article 4 (and part of article 3) of the Regulation 1150/2019 for the business user.

The Regulation establishes that providers of online intermediation services shall ensure that their terms and conditions "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"[15]. Furthermore, where a provider of online intermediation services "decides to restrict or suspend the provision of its online intermediation services to a given business user in relation to individual goods or services offered by that business user, it shall provide the business user concerned, prior to or at the time of the restriction or suspension taking effect, with a statement of reasons for that decision on a durable medium"[16].

The statement of reason shall contain "a reference to the specific facts or circumstances, including contents of third party notifications, that led to the decision of the provider of online intermediation services, as well as a reference to the applicable grounds for that decision referred to in point (c) of Article 3(1)". This is not necessary where the platform is subject to "a legal or regulatory obligation not to provide the specific facts or circumstances or the reference to the applicable ground or grounds, or where a provider of online intermediation services can demonstrate that the business user concerned has repeatedly infringed the applicable terms and conditions, resulting in termination of the provision of the whole of the online intermediation services in question"[17].

For terminations concerning the whole service offered by the platform, the communication must be at least 30 days before the measure takes effect[18]. The notice period shall not apply where a provider of online intermediation services: "a) is subject to a legal or regulatory obligation which requires it to terminate the provision of the whole of its online intermediation services to a given business user in a manner which does not allow it to respect that notice period; or b) exercises a right of termination under an imperative reason

[15] Regulation 1150/2019, art. 3, para 1, lett. c.
[16] Regulation 1150/2019, art. 4, para 1.
[17] Regulation 1150/2019, art. 4, para 5.
[18] Regulation 1150/2019, art. 4, para 2.

pursuant to national law which is in compliance with Union law; c) can demonstrate that the business user concerned has repeatedly infringed the applicable terms and conditions, resulting in the termination of the provision of the whole of the online intermediation services in question"[19].

In all cases (suspension, termination or restriction), the business user must have the "opportunity to clarify the facts and circumstances in the framework of the internal complaint-handling process" and, if the measure is revoked, the platform shall "reinstate the business user without undue delay, including providing the business user with any access to personal or other data, or both, that resulted from its use of the relevant online intermediation services prior to the restriction, suspension or termination having taken effect"[20].

The sanctioning powers of the platform constitute a very delicate aspect also in consideration of the strong dominant positions existing in the market, which can make the consequences of exclusion more prejudicial.

A greater *ex ante* transparency in contractual conditions and a clearest and fair procedure for the application of these measures, together with written and detailed communications for the exercise of the right of defense and appeal, are crucial. The Regulation moves in this direction, but could be further detailed, also through the adoption of *soft law* tools or technical standards, such as ISO standards, as is happening with regard to *reputational feedback systems*[21].

The new Digital Services Act package[22], announced by the European Commission, aims also to introduce new measures on notice and take down mechanism (used for the removal of illegal content online), but it does not take into account suspension and termination measures. The IMCO Committee calls the Commission to require platforms to verify the information and identity of the business partners and to strengthen information requirements for business customers, but neither further protection of business users on the supply-side seems to be on the plan. The drafted proposal contains also the introduction of an "ex ante regulation of systemic platforms" for the "online gatekeepers" of the digital economy; maybe, this could be the right context to introduce measures to protect all types of users.

3. Ranking algorithms and differentiated treatments.

Algorithms are the true heart of the platform: they determine the flow of the news on social networks and advertised products related to each and every action of the user. In the platform economy, the match between customers and suppliers is decided by the algorithm, and the functioning of this algorithm becomes crucial for the supplier who wants to sell on the platform. These aspects can also create competition-related issues: algorithms can distort competition and lead to unfair commercial practices. The choices on the information provided for customers can distort competition, can be considered inequal treatment of business users and constitute unfair commercial practices.

With regard to the use of algorithms for ranking of products and services, the European

[19] Regulation 1150/2019, art. 4, para 4.
[20] Regulation 1150/2019, art. 4, para 3.
[21] ISO 20488:2018, Online customer reviews. Principles and requirements for their collection, moderation and publication.
[22] Ursula von der Leyen, 'A Union That Strives for More. My Agenda for Europe' 24 <https://ec.europa.eu/commission/sites/beta-political/files/political-guidelines-next-commission_en.pdf>, accessed on 2.11.2020; IMCO, 'Draft Report with Recommendations to the Commission on Digital Services Act: Improving the Functioning of the Single Market' [2020] (2020/2018(INL)).

Legislator introduced some protection for consumers with the Directive 2161/2019[23] and new measures for business users with article 5 of the Regulation 1150/2019, applicable to online intermediation services and search engines. Moreover, article 7 of the Regulation set out new rules regarding "differentiated treatment".

Article 5 of the Regulation establishes that providers of online intermediation services shall introduce in the terms and conditions information on "the main parameters determining ranking and the reasons for the relative importance of those main parameters as opposed to other parameters"[24] and that the provider of a search engine shall set out on the website "the main parameters, which individually or collectively are most significant in determining ranking and the relative importance of those main parameters, by providing an easily and publicly available description, drafted in plain and intelligible language, on the online search engines of those providers"[25].

The description shall be "sufficient to enable the business users or corporate website users to obtain an adequate understanding of whether, and if so how and to what extent" the ranking mechanism takes into account characteristics of goods and services, the relevance of those characteristics for those consumers and (only for search engines) the design characteristics of the website used by corporate website users[26]. The transparency requirement does not include the disclosure of the algorithm and the provider can omit "information that, with reasonable certainty, would result in the enabling of deception of consumers or consumer harm through the manipulation of search results"[27].

Search engines must also indicate where "the main parameters include the possibility to influence ranking against any direct or indirect remuneration paid by business users or corporate website users" and give "a description of those possibilities and of the effects of such remuneration on ranking"[28]. Furthermore, they must notify any alteration of the ranking order or delisting adopted for specific cases, offering to the business user the possibility to inspect the contents of the notification[29].

In addition, article 7 establishes that providers of online intermediation services shall describe, in their term and conditions, "any differentiated treatment which they give, or might give, in relation to goods or services offered to consumers through those online intermediation services" and indicate "the main economic, commercial or legal considerations for such differentiated treatment"[30]. Similarly, online search engines must indicate any differentiated treatments on the website[31]. In particular, the description should cover differentiated treatments on ranking, access to data, remuneration, additional tolls and services.

Ranking poses the widest and most widespread problems concerning the use of algorithms in terms of lack of transparency (the so-called "black box") and in terms of control mechanisms. The decision adopted by the algorithm can be evaluated in terms of

---

[23] In particular, the Directive 2161/2019, "amending Council Directive 93/13/EEC and Directives 98/6/EC, 2005/29/EC and 2011/83/EU of the European Parliament and of the Council as regards the better enforcement and modernisation of Union consumer protection rules", introduce a new art. 6-bis in the Directive 83/2011 concerning marketplaces and, also, ranking parameters; modifies the Directive 29/2005, art. 7, adding two paragraphs, 4-*bis* and 6, concerning ranking and reputational feedback system.

[24] Regulation 1150/2019, art. 5, para 1.

[25] Regulation 1150/2019, art. 5, para 2.

[26] Regulation 1150/2019, art. 5, para 5.

[27] Regulation 1150/2019, art. 5, para 6.

[28] Regulation 1150/2019, art. 5, para 3.

[29] Regulation 1150/2019, art. 5, para 4.

[30] Regulation 1150/2019, art. 7, para 1.

[31] Regulation 1150/2019, art. 7, para 2.

lawfulness and unlawfulness with respect to multiple profiles. These include, in particular, those deriving from the principle of equality, formal and substantial, between citizens and from the protection of competition and the market. In the case of intermediation platforms, as well as in other fields of application, the introduction of the accountability principle and the risk analysis concerning the algorithmic activity[32] appear as the most suitable solutions to ensure flexible and substantial protection in an extremely technical context, in which the transparency of information, even where deemed possible in the presence of new forms of protection of the intellectual property of the algorithm, would not in itself be sufficient to protect the market and the subjects involved.

4. Data and business users: how to unlock business data?

In the multimedia habitat, data play a crucial role. In the platform economy, they are relevant for the matches, description of products and services, profiling of *customers*, *ranking* and *reputational feedback system*. Where they fall within the definition of "personal data"[33], the Regulation 679/2016, "on the protection of natural persons with regard to the processing of personal data and on the free movement of such data", will apply for the protection of personal data of natural persons and the free movement of data. However, data are relevant even beyond the GDPR, even the "non-personal data" and, in particular, the data related to the activities of the business users (products, clients, etc.) are essential for the business and the independence of the business user[34]. In particular, relevant data for business users comprehend: information on products and services, user identification details, data on individual transactions, business performance (i.e. information on all transactions taking place through the platform, customer behavior, analyses of market trends/developments)[35], business reputation.

The platform economy is a clear instance of the contrast between the opposing needs of data circulation, as "new oil", and the protection of privacy. In the platform economy, however, data circulation become more urgent to reduce lock-in effects and encourage competition in a highly centralized market. For example, the business user cannot import to a new platform the product description created on the platform, the data relating to customers, their purchasing preferences and the reputation acquired through the reputational feedback systems.

Users who are not natural persons are basically excluded from the benefits arising from the application of the General Data Protection Regulation. The concept of "person" referred in the Directive 46/95/CE "on the protection of individuals with regard to the processing of personal data and on the free movement of such data", repealed by the GDPR, had initially been transposed by the Italian legislator as encompassing legal entities, bodies and associations[36], thus determining an extension of the scope of the regulation also to legal

---

[32] A Koene and others, 'A Governance Framework for Algorithmic Accountability and Transparency' [2019] EPRS 1 <http://www.europarl.europa.eu/RegData/etudes/STUD/2019/624262/EPRS_STU(2019)624262_EN.pdf>, accessed on 2.11.2020.

[33] Silvia Martinelli (n 9).

[34] P Hausemer and L Rabuel, 'Study on Data in Platform-to-Business Relations' [2017] European Commission; I Graef, S Y Wahyuningtyas and P Valcke, 'Assessing Data Access Issues in Online Platforms' (2015) 39 Telecommunications Policy 375 <http://dx.doi.org/10.1016/j.telpol.2014.12.001>; I Graef, J Verschakelen and P Valcke, 'Putting the Right to Data Portability into a Competition Law Perspective' [2013] The Journal of the Higher School of Economics, Annual Review 1; Silvia Martinelli, 'Sharing Data and Privacy in the Platform Economy: The Right to Data Portability and "Porting Rights"' in L Reins (ed), *Regulating New Technologies in Uncertain Times* (Springer 2019).

[35] P Hausemer and L Rabuel (n 34).

[36] Art. 1, lett. c), l. no. 675/1996.

persons. With the dl n. 201/2011, converted with Law 214/2011, art. 40, the Legislator eliminated this reference, thus limiting the scope of application to natural persons. Thus, a part of business users cannot exercise the rights of the data subject.

The extension to legal persons, however, applies with reference to Directive 58/2002, relating to the processing of personal data and the protection of privacy in the electronic communications sector, the so-called "E-privacy Directive", also implemented in the Code for the protection of personal data, in Title X, dedicated to «Electronic communications». With reference to this Directive, the extension to natural persons, found in the definition of "abbonato"[37], reconfirmed by the Garante per la protezione dei dati personali with the Provvedimento no. 262 of 20.9.2012[38], where the Italian Data Protection Authority stated that, despite the aforementioned legislative intervention aimed at excluding the application to legal persons, the protection of legal persons should not be considered excluded and the concept of personal data should be considered, for the scope of the Directive 58/2002, as also extended to them. In particular, the Italian Authority argued that the concept of "personal data" should, in this case, be interpreted in connection to the notion of "abbonato" or "contraente", applicable to both natural and legal persons. Also with regard to the E-privacy Directive, the European Commission had proposed a revision, with a transition from Directive to Regulation, for adapting and coordinating the old rules with the GDPR. But this revision process has not still led to adoption of a definitive text[39]. With the entry into force of the GDPR, while pending the revision of the E-privacy regulation, the applicability of Directive 58/2002 to legal persons remains, due to the use of the term "subscriber". The current proposal for the E-privacy Directive proposed an analogous extension of the protection to legal persons, expressly mentioning them as well as referring generically to the "end user", but also in this text remains, at present, with regard to definition of "personal data", a mere reference to the GDPR[40].

Considering the weakness of business user platforms in this context, the possibility to extend the definition also for the use of online intermediation services or search engine should be evaluated. The relevant rights for business users are the right to access (now introduced also for business users by the Regulation 1150/2019) and right to data portability. Otherwise, the introduction of new forms of contractual protection of the business users regarding data, with mandatory rules, shall be considered.

With regard to the right to data portability, the GDPR provides the data subject both the right to receive a copy (in a structured format, commonly used and readable by an automatic device), and the right to transmit such data to another data controller. This could help the competition in the market; however, it is the worst-implemented right of the GDPR and a real use of this instrument is still to come.

Also the Digital Content Directive, protecting consumers "on certain aspects concerning contracts for the supply of digital content and digital services", has introduced some first regulation on the destiny of the data at the end of the contractual relationship. Article 16 of the Directive 770/2019 ("Obligations of the trader in the event of termination") establishes that the trader shall "refrain from using any content other than personal data, which was provided or created by the consumer when using the digital content or digital service supplied

[37] Art. 4, 2° co., lett. c) of D.lgs. 196/2003.

[38] Provvedimento n. 626, 20.9.2012, "in ordine all'applicabilità alle persone giuridiche del Codice in materia di protezione dei dati personali a seguito delle modifiche apportate dal d.l. n. 201/2011", doc. web n. 2094932.

[39] "Proposal for a Regulation concerning the respect for private life and the protection of personal data in electronic communications and repealing Directive 2002/58/EC (Regulation on Privacy and Electronic Communications)", COM/2017/010 final - 2017/03.

[40] Recital 3 of the Proposal.

by the trader, except where such content: (a) has no utility outside the context of the digital content or digital service supplied by the trader; (b) only relates to the consumer's activity when using the digital content or digital service supplied by the trader; (c) has been aggregated with other data by the trader and cannot be disaggregated or only with disproportionate efforts; or (d) has been generated jointly by the consumer and others, and other consumers are able to continue to make use of the content"[41]. And, most of all, except in the referred cases (a), (b) and (c), the trader "shall, at the request of the consumer, make available to the consumer any content other than personal data, which was provided or created by the consumer when using the digital content or digital service supplied by the trader" (free of charge, without hindrance from the trader, within a reasonable time and in a commonly used and machine-readable format) [42].

At the moment, with regards to data and business users, only article 9 of the Regulation 1150/2019 ("Access to data") applies. The provider of online intermediation services shall include in its terms and conditions "a description of the technical and contractual access, or absence thereof, of business users to any personal data or other data, or both, which business users or consumers provide for the use of the online intermediation services concerned or which are generated through the provision of those services"[43]. The description must inform the business user about: a) the possibility for the platform to access personal and non-personal data provided or generated by consumers and business users for the use of the services, specifying the categories of data concerned and conditions; b) the possibility for the business user to access the same data, specifying the categories and conditions; c) the possibility of accessing such data in aggregate form ("provided by or generated through the provision of the online intermediation services to all of the business users and consumers"), with specification; d) the provisions to third parties of the data and, "where the provision of such data to third parties is not necessary for the proper functioning of the online intermediation services, information specifying the purpose of such data sharing, as well as possibilities for business users to opt out from that data sharing"[44].

Both provisions, art. 16 of the Directive and art. 9 of the Regulation, provide detailed disciplines of terms and conditions in relation to the data: the first with regard to the time of the end of the relationship, the second with respect to the data processed and to which it is possible to access or to which the platform or third parties can access.

It is not clear why, in this case too, it should not be possible to adopt a uniform discipline that encompasses both disciplines, since even if the consumer also enjoys the rights set out in Regulation 679/2016, these do not apply to non-personal data and he would remain, however, excluded from protection the *customer* who is not a consumer. The need for greater clarity and transparency with respect to the data processed and the "data cycle" is strongly felt for all users, also business users, now locked in the platform.

In conclusion, with regard to the business user, any regulation on the termination of contract is lacking, and no data portability right is provided. Article 9 elaborates a good distinction between the types of data processed and highlights the needs of business users with respect to the data; however, it settled-out mere information obligations.

The information obligations and the knowledge regarding the data processed may constitute a first step towards a negotiation, but the contractual weakness of the business user towards the platform makes it difficult to realize. New studies, policies and also legislative instruments introducing mandatory rules concerning data sharing should be

[41] Directive 770/2019, art. 16, para 3.
[42] Directive 770/2019, art. 16, para 3.
[43] Regulation 1150/2019, art. 9, para 1.
[44] Regulation 1150/2019, art. 9, para 2.

implemented to protect business users and the market.