

## Expert group for the EU Observatory on the online platform economy

### Work stream 8: Contribution to Evaluation of P2B Regulation

#### Concept note

##### 1. Policy context

In line with Article 18 of the P2B Regulation, the Commission should periodically evaluate this Regulation and closely monitor its effects on the online platform economy, in particular with a view to determining the need for amendments in light of relevant technological or commercial developments. In order to obtain a broad view of developments in the sector, the evaluation should take into account the experiences of Member States and relevant stakeholders.

As emphasised in Article 18.4 of the P2B Regulation, the Commission should also duly consider the opinions and reports presented to it by the group of experts for the Observatory on the Online Platform Economy established in accordance with the Commission Decision C(2018).

##### 2. Research/Policy questions and methodology

The P2B Regulation applies since 12th of July of 2020. The application of the Regulation has been strongly influenced by the pandemic situation. The restrictive measures adopted to control the spread of the pandemic (lockdown, mobility restrictions, limited capacity, etc.) have driven an extraordinary growth of the digital economy and, in particular, the platform economy. Both professional users and consumers greatly depend upon platforms for the distribution of and access to products and services. Nevertheless, the application period of the Regulation is too limited to allow for a complete evaluation of the effectiveness of the rules at this stage, particularly in light of the exceptionality of the global situation.

The impact of the Regulation rules is, furthermore, determined by the awareness of the Regulation and its rules by the professional users. Particularly, among MSMEs (micro-, small-and-medium-sized enterprises), the awareness is arguably limited. Enhancing the awareness of the Regulation will reinforce the effectiveness of the rules and the level of compliance. Likewise, the effectiveness of the Regulation greatly depends on a high level of coherence among all concurrently applicable rules; to that end, overlaps and inconsistencies should be prevented and eliminated to the full extent in order to ensure legal certainty and predictability.

The workstream may organize its work on three thematic vectors.

The first possible focus of the present workstream is to **identify strategies and to develop a methodology to ensure, expand, and enhance the general awareness of professional users in the online platform economy, mainly, MSMEs, of their (platform-specific) rights**. The aim is not to implement communication strategies (workshops, communication campaigns, etc), but, on the contrary, to reflect on effective methods and strategies to promote compliance and enhance the outreach of awareness. The findings, and the proposals, albeit primarily focused on the P2B Regulation, may reach a greater scope and produce recommendations and guidance to assess and increase awareness of rules on the digital economy.

The second focus is to consider **tackling interaction of P2B Regulation with other relevant rules and assessing coherence among all instruments on specific issues**. The development of solutions (e.g. complaint-handling mechanisms, ranking, terms and conditions, etc.) has coincided with the elaboration/adoption of other EU instruments with partly overlapping scopes and/or equivalent policy goals, or similar rules with different policy goals. The P2B Regulation covers certain aspects such as transparency, terms and conditions, ranking, etc. that are common in other instruments such as the Unfair Contractual Practices Directive and the national rules that implement them and possibly in other voluntary or even potentially national initiatives, which may encourage, for example, relative prominence of greener goods and services on online intermediation services (e.g. in the agri-food, retail and tourism ecosystems). Those instruments have been designed to be fully complementary in *legal terms*. For example, the Digital Services Act intends to extend certain complaint-handling rights that exist for business users under the P2B Regulation to private individuals – binding regulation on both sides of the platform in this regard helps ensure an adequate balance of the various fundamental rights involved. However, the limited awareness of platform-specific legislation, mentioned above, combined with a possible divergent interpretation of legal notions by online platforms, may complicate the implementation of the various legal instruments involved. Assessing the way in which platform legislation is implemented in practice may help to identify practical tools, tips and tricks for optimising compliance, both in terms of efficiencies for platforms as well as in terms of awareness and accessibility for business and end users. Such practical tools, tips and tricks will be informative to future policy making or sector specific proposals (e.g. in Codes of Conduct) that may come from the Commission in the future or which, may grow ‘bottom-up’.

The coherence assessment will include selected issues. In addition to the above-referred aspects (terms and conditions, ranking, complaint-handling, others to be determined), the **scope** of the Regulation could be also considered. For example, analysing a possible extension to cover B2B platforms or analysing whether the scope should extend to software such as web browsers, where similar issues that drove the proposal for the P2B Regulation may be evident and could be addressed in the same way (e.g. with more transparency, dispute resolution).

The third focus is on the aspect of Article 18, which requires the Commission to ‘take into account the content and functioning of any codes of conduct referred to in Article 17, where appropriate’. The Commission is to encourage the drawing up, the adoption, and the implementation of codes of conduct intended to contribute to the proper application of the Regulation. Code of conducts may be general, transversal, or sector-specific. Article 13 in turn requires the Commission to ‘encourage providers (..) to, individually or jointly, set up one or more organisations providing mediation services which meet the requirements specified in Article 12(2)’. Self- and co-regulation plays an important role in the P2B Regulation. The present workstream could therefore helpfully **analyse the role of self- and co-regulation in the context of the Regulation, assess the types of codes of conduct that may be suitable** (formulating entity, participants, sector covered, specific obligations, legal form, personal and territorial scope), **and their implementation**. The workstream will assess the merits of self-regulation in increasing the adaptability of the rules to market needs and sectoral particularities, but also pay special attention to the drawbacks of codes of conduct and the limitations of self-regulation in the framework of the P2B Regulation.