

Non-paper on the repeal of the P2B Regulation in the Digital omnibus

This is a joint non-paper of Austria, Belgium, Italy and the Netherlands. The signatories acknowledge and support the Commission's efforts to reduce administrative burdens by avoiding potential overlaps between the P2B Regulation and other EU legislation. Addressing those parts of the P2B Regulation that clearly overlap with other EU legislation, primarily the DSA and DMA, will simplify the applicable rules and increase legal certainty for businesses, making the EU more competitive and commercially attractive.

However, the Commission's proposal to repeal the entire P2B Regulation, with only limited and time-gated exceptions, will lead to loopholes and weaknesses in the legal protections that are disproportionate to the marginal reduction in administrative burdens that would be achieved.

While simplification efforts are supported by the signatories, they should not come at the expense of the essential safeguards for European SMEs. Such safeguards include transparency regarding general terms and conditions, predictability in the event of changes, insight into rankings and clear procedures in the event of restriction or suspension. Their importance is reflected in the growing awareness of P2B rights and the increasing number of complaints concerning non-compliant platforms.

The P2B Regulation contributes to the proper functioning of the single market by harmonising rules that afford transparency, fairness and effective redress tools to business users of platforms. In this regard, it has a specific approach and constitutes a first step toward establishing a comprehensive EU legal framework for online intermediaries. The DMA and DSA have different targets and scopes. They do not provide the same substantive obligations, nor do they offer the subsidiarity and proximity afforded by the P2B Regulation. Therefore, they cannot offer the same level of protection in such situations.

Simplification efforts should lead to a genuine reduction in regulatory burden. We believe that targeted adjustments to remove clear overlaps with the DSA and DMA would streamline the regulatory framework without dismantling essential protections. The limited administrative burden associated with the remaining P2B provisions, as detailed below, would be proportionate in light of the legal certainty and protection they afford SMEs.

Therefore, we urge the Presidency to propose a more targeted and proportionate approach to reduce complexity and administrative burdens within the P2B Regulation while preserving the necessary protection this legislation offers for businesses, in particular SMEs. Below, we set out the substantive provisions that need to be maintained to ensure an adequate level of protection for business users as well as the enforcement measures that avoid the risk of a governance gap due to weakened national enforcement. Furthermore, adequate protection of business users, particularly SMEs, should be maintained on a permanent basis.

1. Substantive provisions that should remain to ensure adequate protection for business users

a. Material obligations

Right to termination and notice period in case of changed T&C's (Article 3.2) Besides the transparency obligations discussed below, Article 3 also contains material obligations for platforms. Without Article 3.2, business users will no longer be informed before terms and conditions are changed and they will lose the right to terminate the agreement on these grounds. This harms the business user's position in their relation to the platform by weakening contractual transparency and predictability.

Notice period in case of termination (Article 4.2) The repeal of this provision would lead to business users no longer being granted a notice period before their access to the platform services is terminated. This prevents them from taking appropriate measures or challenging the termination decision before it takes effect, rendering them vulnerable to arbitrary decisions by the platform.

Complaint handling system (Article 11) The repeal of Article 11 severely limits the business user's ability to challenge unfair or illegal conduct through an internal complaint-handling system. While they will still have access to an internal complaint handling system under the DSA, its scope is limited to illegal content or alleged violations of the platform's terms and conditions. This in turn leaves the business user without quick and effective remedies against P2B non-compliance by the platform, technological issues or any other measures taken by the platform in the context of providing intermediation services that affect the business user.

b. Transparency obligations

Terms and conditions (Article 3) In addition to the material obligation of Article 3(2) mentioned above, the transparency obligations set out in Article 3 offer considerable protection to business users, particularly since non-compliant terms and conditions are automatically null and void. The repeal of Article 3 would remove an important safeguard for business users against arbitrary enforcement, thereby depriving them of the right to be informed in advance, in a clear and comprehensible manner, of the potential conditions under which the service may be restricted, irrespective of the size of the platform.

Ranking (Article 5) National authorities play a crucial role in addressing ranking-related complaints from business users, and some signatories have received a notable number of such requests under the current P2B framework. Repealing Article 5 would therefore shift the enforcement of these issues away from national regulators and risk reducing the accessibility and effectiveness of redress for SMEs operating on platforms.

Differentiated treatment (Article 7) Without this provision, platforms are free to put business users at a disadvantage where they compete with the platform's own products and services, or with other business users controlled by the platform, without disclosure. Because there is no obligation of any kind to be transparent, business users will not be able to know whether, how and why this is happening. The transparency required by Article 7 provides insight into the different forms of differentiated treatment and enables authorities, including those under the

DMA and competition law, to detect and address such practices. Again, it is important to note that some signatories have received a notable number of Article 7 complaints and tip-offs.

Parity clauses (Article 10) As most platforms are not gatekeepers, repealing Article 10 will allow them to impose parity clauses without transparency. They will not need to provide any justification and prospective business users will not know such restrictions exist. This lack of transparency will make it significantly more difficult for authorities to gain insight into these practices and for affected business users to challenge them.

2. Enforcement measures

The repeal of the P2B Regulation would also mark a shift concerning the enforcement of the rules on online platforms. Article 15 explicitly empowers Member States to enforce its provisions, ensuring proximity between the enforcement body on the one hand and the user that is protected on the other hand, in line with the principle of subsidiarity. This is in contrast to the governance frameworks under the DSA and DMA. In this regard, the P2B Regulation operates as a complementary governance instrument. Whereas the DMA establishes a centralized enforcement model for gatekeepers at Commission level, and the DSA relies predominantly on the country-of-origin principle for oversight of intermediary services, the P2B Regulation provides a more granular and business-user-focused framework enforced directly by Member States. A clear example of this can be seen in the enforcement of Articles 5 and 7 vis-à-vis non-gatekeeper platforms, whereby national enforcement bodies can take action against unfair practices that would otherwise fall outside the remit of the Commission.

The repeal of the P2B Regulation would reduce the powers of national regulators, limiting their ability to intervene and protect business users established in their respective Member States. EU-level enforcement cannot sufficiently cover this enforcement gap. As a result, business users can no longer rely on the intervention of their national enforcement body and would face a significant reduction in the level of protection available to them.

3. Transitory regime

Lastly, it should be noted that a transitional regime is provided for certain P2B provisions. Specifically, the Commission's proposal keeps Articles 2(1)(2)(5), 4, 11 and 15 applicable until 31 December 2032. However, as this regime is limited both in substance and time, and as it does not provide any assurance that the substantive obligations contained in the provisions will remain applicable in any other form after 2032, it alone cannot address the concerns expressed in this document.