



Proposals of the Polish e-commerce sector for the Danish Presidency of the Council of the EU with respect to e-commerce

Dear Policy Makers,

E-commerce is one of the most rapidly growing sectors of the Polish economy, thanks to which Polish entrepreneurs are taking advantage of the opportunity for development in the European single market. Also, it is e-businesses that are known for developing new and innovative solutions that build competitive advantage in the market and make it possible to avoid the so-called middle growth trap. However, the Polish and EU e-commerce sector requires a reform of the regulatory approach to adequately respond to the challenges posed by the economic environment and the need to maintain competition based on innovation. The key challenges are primarily to maintain a level playing field for competition with non-EU e-businesses, based on respect for the EU's fundamental values, and to increase the transparency and certainty of the legal environment.

The Danish Presidency provides an opportunity to implement key projects:

The upcoming Danish Presidency of the Council of the EU will be unique for several reasons:

- 1) The Presidency will take place at a time when both the European Commission and the Member States will already have some experience in applying vital legal acts for the digital economy, i.e. the DMA and DSA. This creates an opportunity to support analyses of the effectiveness of these regulations with practical experience as well as formulate proposals for improving them, including those taking into consideration the context of global challenges for the e-commerce industry. With regard to the recently published draft Commission guidelines on the protection of minors online, the Presidency will have the opportunity to develop a coherent technical approach to age verification in the digital environment. This approach should take into account the need for a graduated set of requirements - depending on the type of service, level of risk, and potential impact on the rights of minors - in order to ensure effective protection while maintaining proportionality of regulation.
- 2) Furthermore, the Presidency has an opportunity to effectively accelerate work on the adoption of the new EU Customs Code and the launch of the EU Customs Data Hub.
- 3) The Presidency also has the opportunity to give impetus to work on a new regulatory package – the Digital Fairness Act (DFA).



In view of the above, the Chamber of Digital Economy has formulated proposals for the Danish Presidency of the Council of the EU concerning the digital sector.

Supporting e-commerce based on respect for fundamental values

As the European Union, we are creating a unique e-commerce market. We base it not only on innovation, but also on two important foundations, ones that are unique globally.

Firstly, the market, rather than being based on a few large entities, allows micro, small and medium-sized enterprises to participate and develop, thus creating an innovative fabric that makes life easier for consumers while generating tens of thousands of jobs.

Secondly, the e-economy is developing in accordance with the fundamental values and rights on which the European Union is based. In the EU, we ensure that the development of modern technologies is in line with values such as freedom of expression, consumer health and safety, privacy, personal data protection, and the right to informational autonomy. It is also extremely important that humans remain subjects rather than objects in relation to technology.

Development is based primarily on the creativity and entrepreneurship of EU citizens. The EU's approach to the development of e-commerce is not just words, but above all, tangible legislative measures: GDPR, AI Act, Digital Services Act, Digital Markets Act, product safety regulations, the Omnibus Directive, and the Digital Fairness Act, which is currently being drafted.

The uneven competitive framework for businesses from within and outside the EU is a challenge

The EU approach faces a significant challenge in the shape of globalisation of the world economy, which is seen particularly in the e-commerce market. This situation has been more and more evident since the development of the “direct to consumer” sales model, which involves many non-EU entities, especially e-retailers from China or those with shareholders there, selling their goods directly to consumers in EU countries. In this way, manufacturers and e-retailers from outside the EU compete directly for the attention of EU consumers. Competition on the global market is far from surprising, but competitive advantage in this case is built not on product quality, customer service, or an innovative business model, but on the fact of operating from countries with a different approach to the values mentioned above. This means that e-businesses hailing from these countries receive public aid at every stage of the value chain to an extent that is not available in the EU. They do not comply with EU product safety requirements, thereby endangering consumer health, nor do they protect personal data. Moreover, they disregard user data privacy and EU consumer protection rules,

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e.g. they often use manipulative and addictive interfaces designed to encourage users to make unfavourable purchasing decisions. In some cases, the e-businesses mentioned above take advantage of child labour, or so-called “modern slavery”. There are also increasing signs that some of them are engaging in price dumping. It is also important to note that non-EU e-businesses have a significant impact on the burden on waste management systems in Member States, while in practice, they do not bear the associated costs. At the same time, they are beneficiaries of EU regulations on duty-free imports of goods worth up to 150 EUR. All this allows these e-businesses to offer much cheaper products.

The need to strike a balance between necessary regulatory intervention and legal certainty and stability

At the e-Chamber, we understand that protecting fundamental values is important and requires legislative action. Also, we know that legal certainty and the costs borne in connection with the implementation of further major changes in the law are also important for e-businesses. In recent years, the e-commerce sector has been required to implement very serious legal regulations: GDPR, DSA, Omnibus Directive, and DMA are just some of them. Each such implementation means costs, including those of programming work, and developing new compliance-related business processes. This involves significant financial resources, which, as a result, are not funnelled to investments and the development of innovative solutions. Meanwhile, such a large number of legal acts often leads to regulatory inconsistencies, overlapping competences of supervisory authorities, or a lack of a consistent understanding of the regulations in individual Member States. While looking at this context, it is worth emphasising that the proposed Digital Fairness Act should be based on legal solutions that are commensurate and targeted at achieving the objective, so that they do not generate excessive regulatory burdens for EU businesses, while at the same time providing real and effective enforcement mechanisms, including measures to applied with respect to entities outside the European Union.

Maintaining the EU philosophy requires decisive action

If, as the European Union, we want to maintain the competitiveness of the EU e-commerce industry while preserving the fundamental values on which we base our development while allowing e-businesses to keep working towards innovation, it is necessary to ensure that:

1. EU regulations are also applied to e-businesses operating outside the European Union and do not include mechanisms that allow non-EU e-businesses to gain an unfair competitive advantage;



2. effective mechanisms are introduced for enforcing EU regulations on non-EU e-businesses, including both the possibility of conducting proceedings and enforcing final decisions, so that entities from outside the EU cannot evade legal responsibility arising from their activities on the EU market;
3. the new term of office of EU institutions and bodies is based on the active use of modern legal instruments, such as the DSA, DMA, GPSR, and – if necessary – correct the inefficiencies of this system;
4. legal regulations concerning e-commerce are reviewed to remove inconsistencies, administrative barriers, and regulatory overlaps;
5. new regulations, preceded by risk analyses, are introduced, and the number of new regulations is limited.

As the e-Chamber, we therefore propose that the following issues be made priorities of the Danish Presidency of the Council of the EU, and – in the longer run – for the entire new term of the European Parliament and the European Commission.

A level playing field for competition

In order to maintain a level playing field for competition, it is necessary to undertake the following:

- a. limit the number of new legal regulations that would increase the burden on EU businesses, and – if necessary – precede their introduction with detailed risk analyses;
- b. conduct a review of EU regulations relevant to e-commerce in terms of their applicability to non-EU entities that market their goods, services, or digital content to the EU market;
- c. introduce control mechanisms that will enable effective verification of compliance with standards and legal regulations by entities from outside the EU and that will be adapted to the current business model, i.e. the *direct-to-consumer* model. According to the model, parcels containing goods are sent to consumers in a decentralised manner and placed on the EU market by various Member States. It is important to develop solutions that will enable the effective application of EU regulations protecting consumer safety, among other things. The data provided by entities such as Oeko-Test and Greenpeace is alarming. Goods shipped from China under this trading model largely fail to meet EU standards, thereby posing a threat to the health and even the lives of consumers. Within this framework, it is necessary, among other things, to review the mechanisms for risk analysis and selection of consignments for inspection and to unify operating standards across the European Union.



- d. continuously and thoroughly monitor the availability of public aid in non-EU countries from which e-businesses offer their goods or services to the EU market. The European Union should respond efficiently to such situations and level the competitive playing field by introducing appropriate levels of customs duties.
- e. urgently do away with the de minimis customs exemption threshold (150 EUR), which, in the direct-to-consumer model, allows non-EU e-businesses selling goods retail to consumers in the EU to gain an unjustified competitive advantage; along with the abolition of the threshold, it is necessary to immediately begin work on the design and implementation of the EU Customs Data Hub;
- f. review administrative barriers for businesses (red tape reduction).

Effective enforcement of EU regulations as protection for a value-based e-economy

Some legal acts (such as the GDPR) have introduced legal solutions extending their scope of application to non-EU entities as well. Nevertheless, in many cases, these regulations are not enforced in relation to such entities. The authorities do not initiate proceedings due to difficulties in delivering documents and subsequent problems with enforcing the decisions issued. This is compounded by differences in the rules governing administrative procedures in individual Member States. For this reason, it is necessary to review the current regulations and consider a broader reform of the model for enforcing EU regulations on e-businesses from outside the EU. It is essential to equip supervisory authorities with legal instruments enabling them to effectively enforce EU regulations against entities operating outside the European Union, e.g. by ensuring the possibility of blocking the internet interfaces of platforms that grossly violate their obligations under EU regulations on consumer protection, personal data protection, and electronic communications.

Without action, EU e-businesses have no real chance of competing with non-EU e-businesses. The consequences of failing to take action will include ceding ground to non-EU players and, above all, the failure of the EU economy based on respect for values. We are convinced that setting the right priorities will help to guide the actions of the EU authorities throughout the new term of office.

poświadczenie złożenia podpisów i pieczęci elektronicznych

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