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From: Trio Presidency  
To: Working Party on Competitiveness and Growth (High Level)  
Subject: Regulation of the EU Digital Economy

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Delegations will find in Annex a Trio Presidency note on Regulation of the EU Digital Economy, in view of the meeting of the Working Party on Competitiveness and Growth (High Level) on 9 November 2022.

## Regulation of the EU Digital Economy

This year marks the 20<sup>th</sup> anniversary of the implementation of the EU e-commerce directive<sup>1</sup>. The Directive was one of the first steps to govern the EU digital economy. Notably the Directive sought to capitalise on the opportunities offered by the early Internet and to introduce a regulatory framework that allowed internet companies to scale up on the EU Single Market. Important provisions for the early EU online market include the *internal market clause for online services*<sup>2</sup> as well as the *liability exemptions for intermediary services*<sup>3</sup>. These principles have been recently revisited and reaffirmed under the Digital Services Act (DSA).

It is fair to say that the EU digital economy has undergone one if not multiple revolutions over the last 20 years. Looking forward, the digital and technological developments are set to progress at an even higher speed. The evolution brings forth many gains but also highlights vulnerabilities. There are also instances where opportunities can be lost or not fully utilized. The World Economic Forum estimates that 70 percent of the new value created in the whole economy by 2030 will be digitally enabled, a momentum further accelerated by the COVID-19 pandemic.<sup>4</sup>

Against this background, the EU has enacted a number of regulatory measures to address societal and economic issues arising from the digital transformation. Below follows a table of the regulatory framework. This is intended to give an overview of the current state of regulation of the EU Digital Economy, including proposed measures. The selection is not intended to be exhaustive. Furthermore, the categories presented may overlap.

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<sup>1</sup> Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce'). The deadline of implementation was the 17<sup>th</sup> of January 2002.

<sup>2</sup> Providers of online services are subject to the law of the Member State in which they are established and not the law of the Member States where the service is accessible.

<sup>3</sup> Hosting services include social media, e-commerce platforms as well as video-sharing platforms.

<sup>4</sup> (World Economic Forum Shaping the future of digital economy and new value creation)

<b>Data rules</b>	<b>Consumer rules</b>	<b>Illegal content and copyright</b>	<b>Cybersecurity rules</b>	<b>e-Governance rules</b>
GDPR	Updated Consumer Right Directive	Digital Services Act	EU Cybersecurity Act	Open data (PSI) Directive & proposed Implementing Act on High Value Datasets
e-Privacy Directive (and the proposed e-Privacy Regulation)	EU roaming Regulation	Terrorist Content Regulation	Network and Information Security (NIS) directive	eIDAS Regulation (and the proposed Digital Identity proposal)
Data Governance Act	Directive on Contracts for Digital Content	DSM-Copyright Directive	Proposed European Cyber Resilience Act	Single Digital Gateway Regulation & Implementing Regulation on the Once-Only technical system
Proposed Data Act	Digital Content Portability Regulation	Directive on Audiovisual Media Services	Proposed Regulation on Digital Resilience for the Financial Sector	e-Invoicing Directive
Regulation on the Free Flow of Non-Personal data	General Product Safety Regulation	Proposed Regulation on Combatting Child Sexual Abuse Material		Proposed Interoperable Europe Act
<b>e-Commerce and Online Payments</b>	<b>Fairness on Online Platforms</b>	<b>AI</b>	<b>ICT services and infrastructure</b>	<b>Other measures</b>
Payment Services Directive (PSD2)	Digital Markets Act	Proposed AI Act	European Electronic Communications Code	Regulation on Common Chargers
EU VAT for e-commerce Package	Platform-to-Business (P2B) Regulation	Proposed AI Liability Directive	European Chips Act	Proposal on a pilot for market infrastructures based on Blockchain
e-Commerce Directive	Updated Directive on Unfair Commercial Practices		Proposal establishing the Secure Connectivity Programme	DAC7-directive on Online Platforms reporting on income tax
Proposed EU Markets in Crypto Assets (MiCA) regulation			Open internet access Regulation	Proposed regulation on short-term-rental regulation
Geoblocking Regulation				Proposed regulation on on machinery products

The EU has additionally deployed various policy tools to boost the digital economy in the Single Market, including through the funding of European digital infrastructure, common procurement practices, industry codes of conduct and transition pathways for industrial ecosystems.

To highlight one example, the 2020 European Strategy for data has initiated the development and European co-funding of interoperable *Common European Data Spaces* to facilitate data collection and data sharing with the goal of a data-driven single market. Data spaces are being developed in areas such as Health, Energy, Mobility and Agriculture. Enhanced models for access to data, as well as trustworthy and efficient data sharing, are important for companies to unlock new business opportunities as well as beneficial for public sector to enable better policy making and compliance control.

Finally, there is also a vibrant development in the global digital trade that is closely interlinked with the Digital Single Market. The EU champions digital partnerships with various likeminded third countries and should continue to promote a free flow of data with trust while maintaining the European leadership in data protection and an adequate level of data protection for cross-border data flows. The EU-US Trade and Technology Council is an important platform to exchange and discuss transatlantic cooperation on tech and trade related issues.

Looking forward, the EU has enacted ambitious digital targets for the coming decade through the Digital Compass. Notable targets in terms of EU competitiveness include inter alia the ambition to double the amount of EU unicorns, 75 % of EU companies should use Cloud/AI/Big Data and that 90 % of EU SMEs should develop at least a basic level of digitalisation. To facilitate progress, the policy programme “Path to the Digital Decade” has been set up to as a monitoring and cooperation mechanism to achieve the common objectives and targets for Europe's digital transformation, based on an annual cooperation mechanism involving the Commission and Member States.

## Questions

1. How can the EU best leverage the framework outlined above to increase the competitiveness and digital transformation of the Single Market? Are there some missing parts to help us reach our Digital Decade targets?
  2. In particular with regards to the European Data Strategy, where do you see the biggest added value of increased data sharing to make our single market more fit for the future? Do you see further prospects to promote and encourage the re-use of data by European authorities and European companies?
  3. Considering the EU goals to support SMEs in the digital economy, as well as regions that are lagging in the digitalisation, is the regulatory framework well adapted to their needs? How do you view the balance between competitiveness, innovation and overall regulatory burden?
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