



8. October 2017

### **Danish response to the public consultation on retail regulations in a multi-channel environment**

The development of new technologies has increased the possibilities for consumers of comparing prices and shopping cross-border whenever convenient. To be competitive, retailers need to be present on the internet and to be agile in terms of opening hours, customised services and use of social media.

Furthermore, due to the increasing e-commerce and sensors used in consumer products businesses gather a great amount of customer data. Such data enhance knowledge of consumption patterns and future demand which in turn may improve the decision-making and competitiveness of businesses.

The Danish government welcomes the Commission's approach of setting out best practices on retail regulation. Thus, we believe that rather than proposing new EU legislation that might lead to unnecessary burdens for businesses, existing regulation should be enforced to a greater extent. Furthermore, we support that the Commission has launched a public hearing to get a better understanding of the actual challenges that our retailers face.

However, the Danish government wishes to draw the Commission's attention to a number of aspects that should be taken into account when addressing developments in the retail sector at a European level.

The Danish government agrees with the Commission that we need to ensure future-proof framework conditions for our retailers across Europe in order to maintain a competitive European retail sector in a global economy. It is also important to ensure that societies, consumers and traditional businesses make use of new digital technologies and services. In this sense, online retailers should be able to benefit from the potential of data-driven business models and access to customers through online platforms. We should also ensure that the fundamental principles of the single market are enforced to a greater extent and that retailers compete on a level

playing field through modernising the VAT system for cross-border e-commerce. Finally, the European framework for Market Surveillance should reflect the fact that retailers take part in new and complex supply chains due to increasing import of goods from third countries.

### **Reducing barriers for retail businesses in a multi-channel environment**

Retail is an important sector not only due to the revenue it produces but also the number of enterprises and persons employed in the sector. Currently, the sector is undergoing fundamental changes with the rapid development of e-commerce. The bulk of the cross border online sale is business to business (B2B) transactions, while less than 20 pct. is cross border sale to foreign consumers. This suggests that selling online cross border to foreign private consumers often requires more than a web shop. In order to succeed across borders, businesses often need to establish a physical presence, the necessary delivery logistics as well as marketing activities. Furthermore, businesses need to comply with e.g. consumer regulation and VAT requirements in other Member States as well as to adapt to other payment methods.

In light of retailers' compliance burden, more attention should be devoted to reducing barriers and facilitating better conditions for retailers that try to reach out to consumers in other Member States. As non-harmonised consumer rights in the EU continues to be a barrier for businesses that try to expand across border, retailers should have easy access to information and counselling of applicable rules concerning not only VAT rules and product safety-regulation, but also consumer rights in different Member States. Better access to information and counselling in these areas is in particular important for SMEs whose compliance burden is even heavier, as they do not have the same capital, resources and strength as large-scale companies to cope with the compliance burden. Furthermore, to get a complete picture of retailers' compliance burden, the Danish government suggests that the Commission conducts a study dedicated to the compliance burden for the retail sector.

Legal clarity is important for businesses and consumers, and legal clarity has been a recurrent concern in the discussions on the proposed geo-blocking regulation. Therefore, we would like to ask the Commission to reconsider issuing guidance on the geo-blocking regulation for businesses, if the regulation is adopted. For example, on the term 'shop like a local' and how businesses can avoid being subject to different national requirements in markets they are not targeting their activities to, when following the new regulation. Both businesses and consumers need to know their obligations and rights in these specific situations.

**Benefits of data and access to a platform economy**

Data is the fuel of the future digital economy and is vital for innovation and competitiveness also in the retail sector. The Danish government places great emphasis on the need to ensure a future-proof regulation of the data economy, which support digitisation and does not hinder the use of new, innovative data driven business models. Free flows of data will support cross border trade not just within the EU, but also in trade agreements. It is important to explore further questions related to access to data, liability of data and portability of data. This will benefit our retailers when doing business in Denmark as well as abroad. It is in this respect essential that any new legislation is based on a thorough analysis in order to avoid that legislation leads to unintended consequences for innovation, investment and competition.

Online platforms bring a wide range of benefits to the digital economy. They make the internet effective and relevant for individual users and companies dependent on the type of platform.

The Danish government is aware of the current work to examine unfair contractual clauses and trading practices in platform-to-business relationships. The presentation of the Commission's analysis is indeed welcome and can hopefully provide more evidence and better data about the issue in order for relevant authorities to address it effectively and in a way that does not impose unnecessary burdens on businesses. The Danish government remains convinced of the need of an informed decision making process and a timely assessment of whether existing regulation is sufficiently able to address any potential issues related to online platforms. It will also be relevant to examine how secondary platform services that make it possible to compare products across the market and assess businesses, affect consumer behaviour. It is important to ensure that these service platforms operate on a transparent basis and do not mislead consumers and sound evidence is needed to assess whether existing regulation is sufficient to tackle any identified challenges.

**Better enforcement of the fundamental principles of the single market**

The Danish government supports a better enforcement of the fundamental principles of EU-law as provided in the Treaties i.e. that national regulation has to be justified, non-discriminatory and proportionate. However, these principles do not curtail the sovereign rights of Member States to regulate activities in line with EU law for overriding reasons of public interest such as environmental protection, town and country planning or the protection of public health.

While national laws, including regulation on opening hours, sale of alcohol and tobacco and town and country planning, are often justified by

legitimate reasons, businesses are still met with actual unjustified discriminatory practices across the EU. The Danish government is aware of discriminatory practices that restrict market access to products lawfully marketed in another Member State, for example by requiring businesses to sell a certain percentage of certain products via the 'short supply chain' as well as using a national pre-notification procedure for foreign products.

In order to create a well-functioning single market, it is important to strengthen the compliance and enforcement of the fundamental principles of the single market for goods, including the principle of mutual recognition (Regulation 764/2008) and the use of the notification procedure established by Directive (EU) 2015/1535.

To this end, the Danish Government believes that reinforcing and clarifying the conditions under which it is possible to restrict or deny market access as well as increasing the transparency of Member States' technical regulations, is of great importance.

Furthermore, the Danish Government believes a better application of the Internal Market Problem Solving Network (SOLVIT) and the 'fast track' appeal mechanism, where one of the parties involved in SOLVIT can file a complaint in business cases concerning mutual recognition of goods that are not resolved by SOLVIT, are important elements to ensure a well-functioning single market, including in the retail sector.

#### **Modernising the VAT system for cross border e-commerce**

A prerequisite for well-functioning markets is that businesses operate on fair and equal terms. The ongoing work on ensuring a more sound VAT system in the EU is an important step in obtaining this. In relation to this matter, the Danish government is positive towards the proposal from the Commission to modernise the VAT system for cross-border B2C e-commerce.

Modernising the VAT rules will benefit retailers as it will be easier to reach consumers in other Member States, especially for small businesses. The overall purpose of the Commission's proposal is to minimise burdens attached to cross-border e-commerce arising from different VAT regimes, provide a level playing field for businesses across the EU, and to ensure that the VAT revenues accrue to the member state of the consumer.

#### **Future-proof framework for retailers in a global economy**

It is important that the Regulation on Market Surveillance is up to date and reflects the reality of a market that changes rapidly. We believe that the growing importance of the internet, e-commerce and increasing im-

port of goods from third countries are key challenges that call for new measures.

European retailers take part in new and complex supply chains from manufacturers to end users that must be taken into account. Enforcement initiatives targeting third country businesses should be given high priority.

In addition, focus needs to be put on strengthened cooperation with third country authorities. At EU level, there are already a number of well-functioning practices, coordination fora and systems. However, the use of existing systems and the exchange of data should be optimised and the commitment and obligations of Member States should be clearer. Lack of knowledge is one of the core causes of non-compliance with the rules. Strong priority should, therefore, also be given to providing more user-friendly guidance and application oriented information to all businesses including retailers.