

Financial Law Review

No. 31 (3)/2023

UNIVERSITY OF GDAŃSK • MASARYK UNIVERSITY • PAVEL JOZEF ŠAFÁRIK UNIVERSITY
<http://www.ejournals.eu/FLR>

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CHALLENGES OF DIGITAL ECONOMY¹

Abstract

In the paper, the authors focus on selected aspects (concept and interference) of the currently dynamically developing economic model called digital economy, with the aim of defining the content of the digital economy using the comparison, analysis, deduction and induction of existing definitions and characteristics of the concept of digital economy and the available data and information on the current state of the digital economy in the EU, as well as outlining the regulatory problems associated with it, with a vision of their possible solution.

Key words: digital economy, digitisation in EU.

JEL Classification: M20, K34.

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¹This work was supported by the Slovak Research and Development Agency under the Contract No. APVV-19-0124a and VEGA No. 1/0485/21.

1. Introduction

The digitisation of society is shaping not only new social phenomena [Cenková 2020], but also economic processes and relationships, which also brings possible risks to which society should respond, among other things, in law enforcement. The digitisation² of the economy modifies conventional ideas about the form (shape) and interactions of economic actors (e.g. it changes how consumers obtain information about goods,³ how entrepreneurs can store, network, and capitalise information/data obtained from business relationships). The dynamics of the digital market, the rapid development of technology and its use in the economic environment raises questions about what the future of work and jobs will look like, and raises issues particularly in law enforcement (e.g. taxation, elimination of unfair practices in competition).

In the light of the stated objective, the authors have defined three scientific questions: (i) what is the content of the concept of digital economy (section 1); (ii) what is the state of development of digitisation in the EU (section 2); (iii) whether the legal regulation of the digital economy in its current form is sufficient (section 3).

The literature most often articulates the problem under study in terms of history, current policy and law. In order to explore the theoretical underpinnings, a search of the available literature, including legislation has been undertaken. Using content analysis and other logical techniques, as well as available statistical sources, the authors attempt to answer the above questions in order to highlight the most significant existing and potential risks of the transformation of the standard economic model into a digital economy.

2. Explanation of the concept of “digital economy”

The global changes manifested in economies, due to the development of information and communication technologies applied in economic processes, resulted in the emergence of new business models. Since the 1970s, we have encountered concepts such as information economy [Bell 1973], network economy [Castells 2013: 5].

In the mid-1990s, the potential impact of the internet and digitisation on business was addressed by Canadian financial expert Don Tapscott [1995], who in *The Digital Economy: Promise and Peril in the Age of Networked Intelligence* describes the problems of the

² Digitisation of the economy is understood as the use of digital technologies and data, and the interconnection of economic actors in their economic activities.

³ The concept of goods also includes services, or all forms of assets.

information age and the so-called “networked intelligence” and also identifies the “new” economy as the digital economy, based mainly on the use of technology.

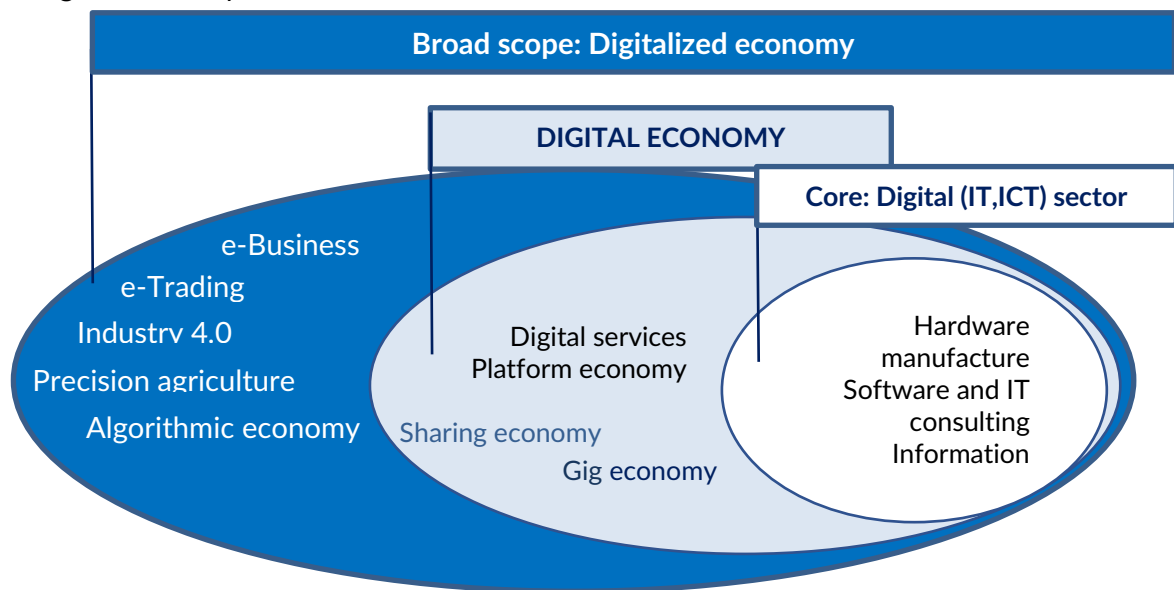
The OECD defines the digital economy as the part of the economy that is comprised of markets based on digital technologies that facilitate the trade of goods (and services) through e-commerce. It divides the digital economy into several segments and suggests certain characteristics and tendencies, such as the network effects, two-sided markets, fast-paced innovation and high rates of investment. It also draws attention to the fact that successful digital platforms have tended to acquire significant but transient market power. [OECD 2013: 5] Most popular definitions agree that it is precisely an economy that embraces new technologies.

A spectrum of economic activities can be considered as part of the digital economy, starting from the sale of goods and services through the digital environment (via various intermediary platforms, creative industries producing digital output, automation of work through digital technology, manufacturing, distribution and more). The digital economy is considered to be based on the combination of the physical and digital worlds (physical and digital assets⁴) and covers a wide range of activities. For example, [Mesenbourg 2001: 2] uses three primary components to define the digital economy – supporting infrastructure, e-business (electronic business processes) and e-commerce (buying and selling goods or services online). He defines it as the combination of a set of technologies designed for common use and the range of economic and social activities that people perform through the internet and related technologies. He also identifies the physical infrastructure underlying digital technologies (broadband, routers), the devices used for access (mobile phones, computers), applications (Google) and the functions they provide (e.g. data analysis, cloud services).

The overlap between the digital and traditional economies makes it difficult to define the content of the digital economy clearly and unambiguously. The multidimensionality of the concept in terms of structure and content is also highlighted by the [UNACD 2019] in its digital economy report (see Figure 1) – which distinguishes between the digital economy in the broad scope (also referred to as the digitalized economy) and the digital economy in the narrow scope.

⁴Which can be seen as a simplification of processes for both sides of the business relationship.

Fig. 1 Digital economy



Source: United Nations 2019.

Most authors, however, use the concept of digital economy to refer all of these areas of economic activity. Therefore, for the purposes of this study, we will also consider the digital economy to be the digital economy in the broad scope.

3. Digitisation in the European Union environment

Online marketplaces, or platforms offering intermediation and other online digital services, have become part of everyday life in the last two decades. Social media, as noted by [Cenková 2017], offer marketing in easy mass accessibility at low cost. It is clear that digital technologies and infrastructure will increasingly determine the way we live (performance of activities – including work activities), and their potential has intensified during the pandemic (COVID-19) period. The process of digital transformation is one of the themes of the European strategy [European Commission 2022a].

As one of the seven flagship initiatives of the Europe 2020 strategy, the [European Commission 2010] adopted a Digital Agenda for Europe in 2010, which outlines a range of policy measures to strengthen the digital economy, speed up the roll-out of high-speed internet and reap the benefits of a digital single market. [European Commission 2010a]

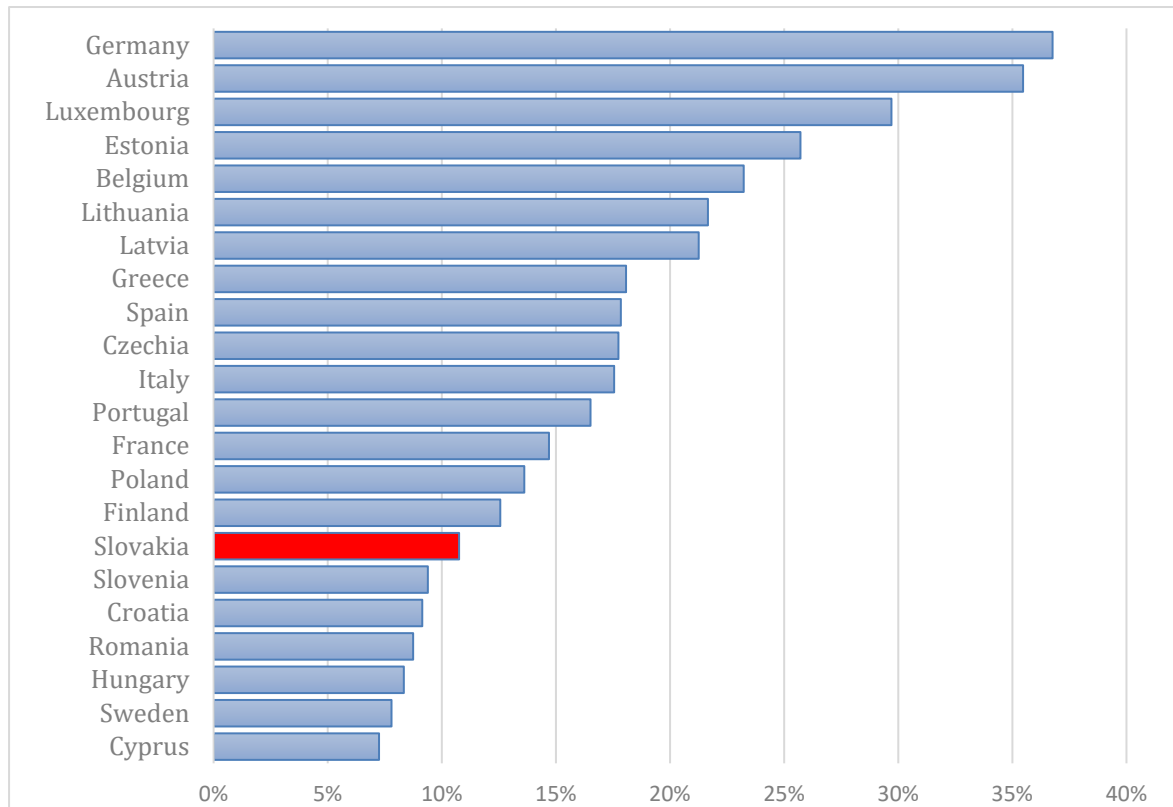
Since 2014, the European Commission has used the Digital Economy and Society Index (DESI) to monitor EU Member States' digital progress in key areas such as human capital,

connectivity, integration of digital technology, and digital public services [European Commission Digital Strategy].

In the context of the ongoing digital transformation, the European Commission published a Digital Compass in March 2021 to help more effectively pursue the EU's ambitions in this area by 2030 [European Commission 2021a] and introduces a monitoring system that will offer recommendations based on quantitative key performance indicators and reports on actions undertaken [European Commission 2021b].

The European Union has decided to invest in the digitisation of society and is offering funds to support the digital transformation. In response to the immediate negative consequences of the COVID-19 pandemic and to ensure that Europe is more resilient to future unexpected challenges, the EU is supporting Member States' reforms and investments in a diversified way. In addition to the funding foreseen under the Multiannual Financial Framework 2021-2027 and the temporary instrument NextGenerationEU, resources from other programmes and funds are being injected into European economies, such as the EUR 127 billion earmarked for digital reforms and investments in national recovery and resilience plans – an unprecedented opportunity to speed up digitisation, increase the EU's resilience and reduce dependency on external sources. According to Article 21 of Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility (RRF), guaranteeing a high level of cybersecurity and trust in technologies is a pre-requisite for a successful digital transformation. Consequently, Articles 26 and 27 emphasise that reforms and investments in digital technologies, infrastructure and processes also have the potential to increase the EU's competitiveness. Thus, the investments aim to “promote the digitalisation of services, the development of digital and data infrastructure, clusters and digital innovation hubs and open digital solutions. The digital transition in this context should also incentivise the digitalisation of SMEs” [Regulation 2021/241: Art. 3]. To receive support from the facility, EU Member States are required to reform and invest in six pillars. In addition to digital transformation, these include the so-called green transition, smart, sustainable and inclusive growth and jobs, social and territorial cohesion, health and resilience, and policies for the next generation, such as education and skills. [Regulation 2021/241: Art. 27] For the overall transformation of the Community, Member States are keen to use on average 26% of their Recovery and Resilience Facility funding for digital transformation, which exceeds the mandatory minimum threshold of 20%. Some Member States have even decided to invest more than 30% of their RRF allocation in digital technologies. The figure below presents the allocation under the declared digital transformation, but does not include those allocations that are implicit in the other pillars.

Fig. 2 Percentage of resources allocated to the EU's digital transformation



Source: Bruegel 2022.

The Recovery and Resilience Facility is a temporary facility that allows funds to be borrowed on the financial markets on behalf of the European Union and redistributed to help Member States implement reforms and investments in line with EU priorities that address country-specific economic and social policy challenges. The RRF support takes the form of grants and, where appropriate, loans to countries, but these are ultimately backed by EU debt.

Another source of financial support for digital transformation is the Connecting Europe Facility (CEF), which focuses on promoting growth, jobs and competitiveness through targeted infrastructure investment at European level in trans-European networks in the fields of transport, energy and digital services. It is now in its second generation and, in the digital area, it financially supports the deployment of 5G, the provision of high-quality local wireless connectivity in local communities free of charge, the coverage with 5G systems of all major transport paths, the deployment of new or the significant upgrading of existing backbone networks, including submarine cables, within and between Member States and between the Union and third countries, as well as cross-border projects supporting operational digital platforms directly associated to transport or energy infrastructures. The financial envelope for the implementation of the CEF for transport, energy and digital

services for the period from 1 January 2021 to 31 December 2027 amounts to EUR 33.7 billion in current 2018 prices [Regulation 2021/1153].

In order to accelerate the digital transformation, the Digital Europe Programme was also established in 2021. The financial envelope for the implementation of the programme for the period from 1 January 2021 to 31 December 2027 is EUR 7.588 billion in current prices, to be distributed between high performance computing (29%), artificial intelligence (27%), cybersecurity and trust (22%), deployment and better use of digital capacity and interoperability (14%), and wider use of digital technologies in the economy and in society (8%) [Regulation 2021/694].

The seven-year funding programme for research and cutting-edge innovation – Horizon Europe builds on Horizon 2020 and focuses on areas where digital technologies can be combined with other technologies (artificial intelligence and robotics, BigData, next generation internet, high performance computing, digital technologies and 6G); EUR 95.5 billion of the budget is expected to contribute to funding digital transformation [European Commission 2021c].

As the figures in Figure 2 on the allocation of resources to digital transformation, which will undoubtedly intensify the functioning of the digital economy, suggest, the decisions by the states on the extent of digitisation are also likely to lead to divergences in this area. This is not to mention the fact that, in their recovery plans, the states prefer a unilateral approach, not only in terms of the extent of allocation but also in terms of the range of areas to be digitised, with no interest in cross-border solutions that would reduce the costs of deploying specific tools and, ultimately, of maintaining technological solutions. In this context, it is possible to speak of a possible inefficient use of European funds, which, in view of the way in which NextGeneration EU will be financed through common European bonds, will be remedied by the states in the coming years by introducing new sources of revenue for the common European budget.

4. Law enforcement in the digital economy

In addition to the public sector, the European digital transformation has the task of allocating a large part of the funds to SMEs, but also to large enterprises engaged in e-commerce and e-business, as well as to digital innovation centres, living labs, internet entrepreneurs and, last but not least, ICT start-ups, with which a number of important and less important issues or problems are linked.

4.1. Tax challenges in the digital economy

As [Hrabčák, Stojáková 2020] note, it is not possible to separate the digital economy from the rest of the economy for tax purposes, and they draw attention to the need to revise the international tax system with regard to the non-taxation of income from digital activities. There is also a lack of political consensus at the EU level on how to tax the income generated by the different components of the digital economy, and at least a European model for the taxation of digital services should be sought. Fundamental issues of global tax policy have long been addressed by the OECD and European institutions, including addressing the problems of taxing the digital economy, strengthening cooperation between tax authorities in Member States to improve tax collection, and promoting good governance in the tax area. Current international tax rules for taxing profits are designed to affect companies with a physical presence in a given jurisdiction. However, new technologies and new business models in the digital economy make it possible to have customers in different countries without any physical presence and to generate profits in the jurisdiction where the providers and consumers are located, with part of the profits not being taxed to those economic entities due to the lack of uniform rules. The European Commission is therefore proposing a reform of corporate income tax rules from 2018, so that profits are taxed where companies have a significant digital presence, and the introduction of a temporary tax on revenues from digital services, the so-called “digital levy”. Following an initiative of the European Commission under the Fair & Competitive Digital Economy programme, a public consultation on the possibility of introducing a digital levy ran from January to April 2021 [European Commission 2021d]. Several potential solutions are being considered, namely: (i) a corporate income tax top-up to be applied to all companies conducting digital activities in the European Union (EU), (ii) a tax on revenues from certain digital activities conducted in the EU, (iii) a tax on digital transactions conducted business-to-business in the EU. All three options can be described as selective taxation, reminiscent of excise duties, but designed to limit the consumption of the selected taxable items. Any complicated rules for taxing a defined group of companies or certain selected activities will thus introduce further distortions and tax uncertainty into an already complex existing tax system. An effective global solution has been sought by the OECD for years, without success. The OECD’s work on tax issues arising from the digitalisation of the economy is leading to a rethink of some fundamental aspects of the international tax system. In particular, rules on the place and scope of taxation, or where and when to tax (Pillar 1), the search for the global anti-base erosion rules (GloBE) to ensure that multinational enterprises, both within and outside the digital economy, are taxed on profits arising where they carry out profit-generating

economic activities and where value is created. If the EU and the OECD do not reach agreement on a global solution, the European authorities, together with Member States, are likely to return to the debate on the EU's approach to the issue. One option is a specific digital levy, without prejudice to the corporate income tax rules under discussion in the OECD.

The unilateral approach to the taxation of selected activities in the digital economy (e.g. Austria, France, Hungary, Italy, Poland, Portugal, Spain, Turkey or the UK), as shown by the KPMG analysis [2021], is merely an attempt by individual states to target certain types of revenue, in particular revenue from advertising, and then – to a varying degree – it targets the sale of content, the sale of user data, paid services, etc.

In any case, selective taxation has a dissuasive effect that risks slowing down the digital market or its potential and is likely to reduce the competitiveness of the European digital economy in the future.

4.2. Other impacts of digital transformation

Internet search, social networking, cloud storage or online intermediation services, asset sharing or advertising can all be grouped under the common label of platform services.

At the heart of the digital economy is the interaction between companies and their customers who, thanks to platforms, have rapid access to goods, services and information. The competitive advantages and, at the same time, the characteristics of digital platform services undoubtedly include economies of scale, extensive network connections and the advantage of having a wealth of data available. The collection and monetisation of data (e.g. the sale of a portfolio of customers for marketing purposes) has arguably driven the biggest change in business through platforms. However, the benefits offered by platforms can lead to unfair competition, a problem linked to the lack of appropriate regulatory frameworks. A number of large online platforms have now gained an influential position in intermediating transactions between commercial and end users, and are behind a crucial share of the value created in the digital economy [Lee 2013]. Regulation is essential to ensure a level playing field where the same rules apply to both traditional and platform businesses. So far, however, states apply different national rules. Such regulatory fragmentation distorts the functioning of the single market and allows, for example, unfair competition.

The introduction of digital technologies into business processes requires financial resources, but also a digital mindset that is not fully inherent, especially in the older generation, which is also reflected in the attitudes of business operators. For example, according to a study

published by the European Commission, it is the (non-)use of data that differentiates European businesses, since, according to this study, around a quarter of businesses do not make any further use of the data they collect, as opposed to those for whom data are a profitable asset [European Commission 2022b], which means that this automatically puts them at a competitive disadvantage.

Digital innovation and the states' strategic approach to digital transformation are driving the emergence of new business models. However, asymmetries are also emerging in digital business, similar to the asymmetric system in the non-digital environment, which distort fair competition and give advantages to certain digital platforms. Among other things, this allows them to create barriers for smaller competitors to enter this industry or to engage in various unfair practices against commercial users (in particular the so-called gatekeepers – monopolies or oligopolies in the field of certain platform services, which unilaterally determine the commercial terms and conditions for both commercial users and end consumers). The unfair practices of such platforms should be eliminated, *inter alia*, by the EU Digital Markets Act (DMA). For the purpose of an assessing whether or not a platform provider is a gatekeeper and has a significant impact on the internal market, it is relevant whether it provides a core platform service in at least three Member States and whether its group turnover realised in the EEA is equal to or exceeds a specific, high threshold or the market capitalisation of the group is equal to or exceeds a certain high absolute value, while the burden of adducing evidence in disagreeing with the categorisation according to the high thresholds set should be borne by that provider [Proposal for a Regulation of the European Parliament and of the Council, 2020, recital 17].

A set of rules to regulate the EU's digital environment, or standards for a more transparent and much safer online environment where technology companies should be held accountable for the content that appears on their platforms, are regulated by the Digital Services Act and the Digital Markets Act [European Commission 2022].

The progressive digitisation of national economies takes place at different levels. The EU's ambition for an inclusive approach to the digitisation of the economy is also reflected in its financial support. Early support for digital transformation through NextGeneration via national recovery plans may be beneficial for individual economies, but individual projects that are implemented without coordinated cross-border cooperation carry the risks of inefficient use of public funds.

Digitisation and innovation are also having an impact on the shape of work⁵. Nowadays, it is already common to encounter a new segment of the labour market, the so-called alternative workforce. This is most evident in the markets for platform services, where providers of such services present themselves as independent workers. At the cost of greater flexibility, they often lose various benefits compared to standard employment. Unlike permanent employees, who have predictable income, social protection, pension and health insurances, the risks of independent work are not compensated by higher income, more autonomy and flexibility that one might expect. As the OECD also notes, these are typical defects that are largely associated with working in platform service markets. And it is not only the financial dimension, but also the professional status, the opportunity to build and maintain a reputation, etc., that such forms of work lack. However, the OECD also sees risks in the possibility of latent discrimination based on gender, ethnicity or social origin [OECD 2016].

One of the implicit impacts on the sustainability of the current social security system, which is financed by labour income, is that the system is unlikely to be able to accumulate sufficient resources to provide for an ageing population as a result of the shortening of standard employment relationships.

It should not be forgotten that the user data handled in the digital economy is information that has a monetary value and represents a new asset class. These are data that are provided voluntarily, for example by sharing them on social media, or recorded data (such as location data, search preferences, etc.), or are the result of analysis of individuals' behaviour. Linking buyer and seller data, browsing patterns, the length and nature of interactions, or matching buyers with their preferred content is a bonus that allows the data collected to be used to create algorithms to set appropriate prices, predict supply and demand, target consumer preferences, and generally make the delivery of services more efficient. This is undoubtedly a competitive advantage. But it is the collection and monetisation of data that has arguably driven the biggest change in business through platforms, which have grown exponentially in recent decades. Business, technology and political trends are shaping a new "ecosystem". This also raises the question of the security and reliability of digital systems – for example in areas such as cybersecurity or data privacy [Ivančík 2022], but also in relation to new digital technologies such as blockchain, 5G infrastructure or artificial intelligence. The divergence of regulatory frameworks across jurisdictions with regard to the use of personal data in particular and the ease of cross-border sharing is a real global challenge.

⁵In this context, we consider it essential to develop the digital skills of the workforce.

5. Conclusion

In relation to the formulation of the scientific questions, the authors reached the following conclusions:

- The concept of digital economy has several definitions and characteristics, all of which agree on the premise that it is an economy that makes use of new information and communication technologies;
- The use of information and communication technologies has triggered a shift from the traditional exchange economy to the sharing economy [Mačejovský, Rankov 2020];
- The digitisation of the economy provides greater living comfort, more sustainable consumption (ICT-mediated tangible goods promote sustainable consumption compared to classical market-based exchanges), reduces disposable production, gives a repurposed manner to idle assets (e.g., a cottage, a vehicle, etc.), and gives value to things that in other circumstances would not have any [Daglis 2022];
- Digitisation has enabled producers and intermediaries to reach a large number of customers even without a physical presence in individual jurisdictions, but at the same time the global reach of digitisation and digitised activities (processes) across a spectrum of areas indicates new potential law enforcement challenges, as cross-border business opens up new business opportunities, but also raises financial, tax and other legal issues (e.g. lack of access by tax authorities to information on taxable transactions, uneven playing field and unequal opportunities);
- Legal regulation of the digital transformation is currently insufficient⁶, as the dynamics of market digitisation are technologically outpacing the regulatory legal framework (both its content and effectiveness) in the areas of cross-border business, international trade, taxation, as well as consumer privacy and security;
- In terms of the way and timing of funds for digital transformation going to EU countries in the form of projects to be financed by them, they carry the risk of inefficient use of public funds (they are also raised through debt).

⁶ Although the need to address the issue of the operation of digital platforms in the EU internal market has already been generally declared in the Digital Single Market Strategy, there cannot be 28 different sets of rules for online platforms in Europe [Rózenfeldová Bachňáková 2022: 5, 22].

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