



## JOINT STATEMENT ON ELECTRONIC COMMERCE

### ESTABLISHING AN ENABLING ENVIRONMENT FOR ELECTRONIC COMMERCE

#### *Communication from the European Union*

The following communication, dated 15 May 2018, is being circulated at the request of the delegation of the European Union.

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Advancing WTO work on Electronic Commerce, including through the negotiations of concrete deliverables, is one of the main trade priority areas for the European Union.

The EU is therefore pleased to take an active part in the exploratory work undertaken among interested Members to implement the MC11 Joint Statement on e-commerce. The EU supports the open, transparent and inclusive character of this WTO process.

The present submission outlines elements that the EU would like to address in the on-going exploratory work. This submission is without prejudice to any future negotiating position and other elements that the EU might put forward in writing at a later stage.

The EU looks forward to engaging with all interested WTO Members in a comprehensive and in-depth exploration of trade related aspects of e-commerce with a view to prepare for the negotiation of concrete outcomes, including on issues raised in the submissions of other Members.

#### **1 INTRODUCTION**

1.1. In this submission, the EU proposes to carry out exploratory work towards future WTO negotiations on a set of obligations and principles aimed to facilitate on-line transactions, i.e. electronic contracts, electronic authentication and trust services, consumer protection, unsolicited electronic messages, authorization requirements for on-line services and custom duties on electronic transmissions.

1.2. Currently, there are no specific WTO disciplines on these elements<sup>1</sup>. However, they have been subject to substantial legislative development around the world and are part of many Members' FTA practices. At the same time, the UNCITRAL has conducted some very relevant work on the matter through the development of model laws.

1.3. WTO rules in those areas would be beneficial for a number of reasons. First, WTO rules on electronic contracts would reassure companies, especially MSMEs, that such contracts will be recognised, hence encouraging them to invest in online solutions. Second, rules on electronic authentication and trust services would encourage more Members to adopt domestic measures and legislation to facilitate the use of such services. Third, recognizing the importance of maintaining and adopting transparent and effective measures to protect consumers engaging in electronic commerce from fraudulent and deceptive commercial practices would reassure consumers and facilitate the uptake of online transactions. Cross-border cooperation between authorities

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<sup>1</sup> Except for a two-year agreement renewed at each Ministerial Conference not to impose custom duties on electronic transmissions.

combatting illegal commercial practices – necessary to ensure an effective protection of consumer rights and thus foster consumer trust – would be facilitated if national measures were based on common principles. Fourth, WTO rules on unsolicited messages would also increase consumer trust, as consumers would be protected against such undesirable practices. Finally, ensuring that on-line services are not subject to specific authorization requirements and committing permanently not to impose custom duties on electronic transmissions would provide certainty to business and consumers, facilitating their engagement in global electronic commerce.

1.4. Against this background, the European Union suggests that Members explore whether new trade rules covering those issues could be a relevant contribution of the WTO to fostering digital trade in the context of the MC11 Joint Statement of e-commerce, to the benefit of both developed and developing Members.

## **2 PROPOSED ELEMENTS**

### **2.1 Electronic contracts**

#### **Rationale**

2.1. Trading on-line is based on electronic contracts. Electronic commerce simply cannot take place if the recognition of such e-contracts is put into question. Legal certainty that electronic contracts will be recognized is necessary to assure companies, especially SMEs, and consumers that electronic transactions that take place through electronic contacts will be valid.

#### **Elements to consider**

- The EU proposes to work towards a provision ensuring that national legal systems allow contracts to be concluded by electronic means and that legal requirements for contractual processes neither create obstacles nor result in such contracts being deprived of legal effectiveness.
- Members would need to reflect about specific exceptions that might be required, such as in the case of real estate transactions.

### **2.2 Electronic authentication and trust services**

#### **Rationale**

2.2. Electronic authentication and trust services, which include services such as electronic signatures, electronic seals, electronic time stamps, electronic delivery service and website authentication, are essential to ensure the authenticity, integrity and privacy of online transactions.

2.3. In many cases, electronic transactions would not be possible without verification of the identity of a website's owner. Similarly, the electronic signature of a final agreement may also require identifying the different signatories to ensure that they have expressed their consent to a content that was maintained. Stamping of an electronic document may be required to ensure it has been submitted at a specific date and time. Finally, in some cases it is important that documents are transmitted to the other party through a secure channel that ensures capturing the moment of sending and of receiving the document.

2.4. Trust services are thus crucial in facilitating both domestic and cross-border e-commerce as they help to ensure the authenticity, integrity and privacy of online transactions. For businesses or consumers in any country to engage in e-commerce (both domestic and cross-border) using electronic authentication and trust services, the appropriate national legal framework must be in place to provide for their legal significance, validity and equivalence with traditional paper-based services. Most countries that have legislation covering electronic signatures and/or other trust services do not impose limitations on the technology used when using such services.

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### Elements to consider

- The EU proposes to work towards a set of provisions to guarantee that national legal frameworks are in place to ensure that Members do not deny the legal effect and admissibility as evidence in legal proceedings of electronic authentication and trust services solely on the basis that they are in electronic form.
- Rules could also be considered to ensure that there are no barriers that would prohibit parties to an electronic transaction from mutually determining the appropriate electronic methods for that transaction; or prevent parties from having the opportunity to prove to judicial or administrative authorities that their electronic transaction complies with any legal requirements related to electronic authentication and trust services.

## 2.3 Consumer protection

### Rationale

2.5. Electronic commerce could only be brought to its full potential if consumers have trust and confidence to engage in online trading activities, if their concrete rights are guaranteed when purchasing on-line and if there are means provided to effectively address problems that might arise.

### Elements to consider

- The EU proposes to carry out the exploratory work towards a legally binding principle ensuring that Members have legislative frameworks in place that protect consumers from inter alia fraudulent and deceptive commercial practices, ensure transparency, and provide for effective redress and other trust-enhancing measures.
- Members may also consider recognising the importance of having effective international cooperation between consumer protection agencies and other relevant bodies to facilitate the implementation of consumer protection measures, especially in relation to cross-border trade, as necessary to enhance consumer trust and support the development of cross-border electronic commerce.
- While developing actual consumer protection standards falls outside the scope of the WTO, Members could agree on a set of binding principles to adopt and maintain the minimum legal domestic framework in place that ensures consumer protection and enhances their trust, leaving sufficient flexibility for defining the exact content and format of the relevant measures at national level.

## 2.4 Unsolicited commercial electronic messages

### Rationale

2.6. Unsolicited commercial communications or messages ("spam") pose a number of challenges for the electronic commerce environment, including in relation to privacy, deception of consumers, protection of minors, extra costs for businesses and loss of productivity. More generally spam undermines consumer trust and confidence, which is a prerequisite for successful e-commerce.

### Elements to consider

- The EU proposes to work towards a set of broad, technology neutral obligations ensuring that consumers are protected against unsolicited commercial communications.
- Consumers should be able to opt out of such messages at any time and/or have the option of opting-in, leaving a choice for consumers to receive unsolicited commercial electronic messages.
- Members could also consider developing a rule ensuring that means of recourse are available for consumers and agree to the principle that spam should be easily identifiable.

## 2.5 Prior authorization

### Rationale

2.7. In an open e-commerce environment, any prior authorization<sup>2</sup> requirement for providing a service should be technologically neutral. Any prior authorization procedure specifically targeting online services exclusively for reasons that a service is delivered electronically could result in additional cost and impact strategic decisions of business, having an overall negative impact on e-commerce (both domestic and cross-border).

### Elements to consider

- The EU proposes to consider developing a rule that ensures that the supply of services by electronic means may not be subject to prior authorisation requirements specifically and exclusively targeting services provided by electronic means.
- Specific exceptions to the rule would have to be considered, such as in the case of telecommunication services.
- Finally, Members may consider relevant language reaffirming the right to regulate for legitimate public policy reasons.

## 2.6 Moratorium on custom duties on electronic transmissions

### Rationale

2.8. The fact that WTO Members have been renewing the moratorium on customs duties on electronic transmissions at each Ministerial Conference over the past 20 years shows that no Member has considered it necessary to impose such duties. Agreeing on a permanent moratorium would provide greater certainty to consumers and business, including MSMEs, and facilitate their engagement in global e-commerce. Moreover, it would contribute to predictability and would therefore facilitate decisions in relation to the strategic planning and structuring of enterprises, while imposition of customs duties could potentially lead to market distortions and trade diversion.

### Elements to consider

- The EU proposes to agree on a permanent extension of the WTO moratorium on the imposition of custom duties on electronic transmissions.

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<sup>2</sup> "Prior authorization" is a broad term and should be understood as any requirement such as permit, licence or approval which needs to be obtained "prior" to an economic activity being allowed to start.