

Disclaimer: In view of the Commission's transparency policy, the Commission is publishing the texts of the Trade Part of the Agreement following the agreement in principle announced on 21 April 2018.

The texts are published for information purposes only and may undergo further modifications including as a result of the process of legal revision. The texts are still under negotiations and not finalised. However, in view of the growing public interest in the negotiations, the texts are published at this stage of the negotiations for information purposes. These texts are without prejudice to the final outcome of the agreement between the EU and Mexico.

The texts will be final upon signature. The agreement will become binding on the Parties under international law only after completion by each Party of its internal legal procedures necessary for the entry into force of the Agreement (or its provisional application).

CHAPTER ON DIGITAL TRADE

Article 1

Scope

1. The Parties recognise the economic growth and opportunities provided by digital trade and the importance of adopting frameworks that promote consumer confidence in digital trade and of avoiding unnecessary barriers to its use and development.
2. The Parties affirm the right to regulate within their territories to achieve legitimate policy objectives, such as the protection of public health, social services, public education, safety, environment or public morals, social or consumer protection, privacy and data protection, or the promotion and protection of cultural diversity.
3. This Title shall apply to trade enabled by electronic means.
4. The provisions in this Title shall not apply to:
 - (a) gambling services,
 - (b) broadcasting services,
 - (c) audio-visual services,
 - (d) services of notaries or equivalent professions,
 - (e) legal representation services,
 - (f) government procurement with the exception of articles 5 (e-contracts), 6 (e-trust and e-authentication services) and 9 (source code) which shall apply to government procurement.

Article 2

Definitions

For the purposes of this Chapter:

'consumer' means any natural person, or legal person if provided for in national laws and regulations of each Party, using or requesting a publicly available telecommunications service for purposes outside his trade, business, craft or profession;

'end-user' means any natural person, or legal person if provided for in national laws and regulations of each Party, using or requesting a publicly available telecommunications service, either as a consumer or for trade, business or professional purposes.

'unsolicited commercial electronic message' means an electronic message which is sent for commercial purposes, without the consent of the recipient or despite the explicit rejection of the recipient, directly to end-users via a telecommunications network and, to the extent provided for under the laws and regulations of each Party, other telecommunications services. For the purpose of this agreement this covers at least electronic mail and text and multimedia messages (SMS and MMS).

'electronic authentication service' means a service that enables to confirm:

- a) the identity of a natural or legal person, and/or
- b) the origin and integrity of a data message from the time when it was first generated in its final form;

'electronic signature' means data in electronic form affixed to or logically associated with that data message, which may be used to identify the signatory in relation to that data message and to indicate the signatory's approval of the information contained in that data message, to ensure its origin and integrity in such a way that any subsequent alteration in the data is detectable;

'electronic trust services' means an electronic service consisting of the creation, verification, validation of electronic signatures, electronic time stamps, electronic registered delivery, certified digitization services, website authentication and certificates related to those services;

'trust service providers' means a natural or legal person who provides electronic trust services

'data message' means information generated, sent, received or stored by electronic, optical or similar means

Article 3

Customs duties on electronic transmissions

1. Neither Party shall impose customs duties on electronic transmissions between a person of one Party and a person of another Party.
2. For greater certainty, paragraph 1 shall not preclude a Party from imposing internal taxes, fees or other charges on electronic transmissions, provided that such taxes, fees or charges are imposed in a manner consistent with this Agreement.

Article 4

Principle of no prior authorization

1. The Parties shall ensure that the supply of services by electronic means may not be subject to prior authorisation.

2. Paragraph 1 is without prejudice to authorisation schemes which are not specifically and exclusively targeted at services provided by electronic means, and to rules in the field of telecommunications.

Article 5

Electronic Contracts

The Parties shall ensure that their legal systems allow for the formation of contracts by electronic means and that contracts shall not be denied legal effect, validity or enforceability for having been made by electronic means¹.

Article 6

Electronic Trust and Authentication Services

1. A Party shall not deny the legal validity of an electronic trust or an electronic authentication service solely on the basis that the service is in electronic form.
2. Neither Party shall adopt or maintain measures regulating electronic trust and electronic authentication services that would:
 - (a) prohibit parties to an electronic transaction from mutually determining the appropriate electronic methods for their transaction; or
 - (b) prevent parties to an electronic transaction from having the opportunity to establish before judicial or administrative authorities that their electronic transaction complies with any legal requirements with respect to electronic trust and electronic authentication services.
3. Notwithstanding paragraph 2, a Party may require that, for a particular category of transactions, the method of authentication meets certain performance standards or is certified by an authority accredited in accordance with its law. Such requirements shall be objective, transparent and non-discriminatory and shall relate only to the specific characteristics of the category of transactions concerned.
4. The Parties shall encourage the use of interoperable electronic trust and electronic authentication services, and the mutual recognition of electronic trust and electronic authentication services issued by recognised trust services providers.

Article 7

Online Consumer Protection

1. The Parties recognise the importance of maintaining and adopting transparent and effective measures that contribute to consumer trust, including but not limited to measures that protect consumers from fraudulent and deceptive commercial practices when they engage in electronic commerce.

¹ This provision shall not apply to contracts that create or transfer rights in real estate; contracts requiring by law the involvement of courts, public authorities or professions exercising public authority; contracts of suretyship granted and on collateral securities furnished by persons acting for purposes outside their trade, business or profession, as required by law; and contracts governed by family law or by the law of succession.

2. To this end each Party shall adopt or maintain measures that contribute to consumer trust, including measures that proscribe fraudulent and deceptive commercial practices that cause harm or potential harm to consumers.
3. The Parties recognise the importance of cooperation between their respective national consumer protection agencies or other relevant bodies on activities related to electronic commerce between the parties to improve consumer trust, in order to enhance consumer welfare.

Article 8

Unsolicited Commercial Electronic Messages

1. Each Party shall adopt or maintain measures regarding unsolicited commercial electronic messages that:
 - (a) require suppliers of unsolicited commercial electronic messages to facilitate the ability of recipients to prevent ongoing reception of those messages; or
 - (b) require the consent, as specified according to the laws and regulations of each Party, of recipients to receive commercial electronic messages.
2. Each Party shall ensure that unsolicited commercial electronic messages are clearly identifiable as such, clearly disclose on whose behalf they are made and contain the necessary information to enable end-users to request cessation free of charge and at any moment.
3. Each Party shall provide recourse against suppliers of unsolicited commercial electronic messages that do not comply with the measures adopted or maintained pursuant to paragraphs 1 and 2.
4. The Parties shall endeavour to cooperate in appropriate cases of mutual concern regarding the regulation of unsolicited commercial electronic messages.

Article 9

Source Code

1. No Party may require the transfer of, or access to, source code of software owned by a juridical or natural person of the other Party.
2. For greater certainty:
 - a) this Article shall not prevent a Party from adopting or maintaining measures inconsistent with paragraph 1 to achieve a legitimate public policy objective, including to ensure security and safety, for instance in the context of a certification procedure, in accordance with [reference to general exception, security exception and prudential carve-out].
 - b) paragraph 1 does not apply to the voluntary transfer of or granting of access to source code on a commercial basis by a person of the other Party, for instance in the context of a public procurement transaction or a freely negotiated contract.
3. Nothing in this Article shall affect:
 - a) requirements by a court, administrative tribunal or competition authority to remedy a violation of competition laws;
 - b) intellectual property rights and their enforcement; and

- c) the right of a Party to take any action or not disclose any information that it considers necessary for the protection of its essential security interests relating to the procurement of arms, ammunition or war materials, or to procurement indispensable for national security or for national defence purposes.

Article 10

Open Internet Access

Each Party shall endeavour to ensure that, subject to applicable policies, laws and regulations, end-users in its territory are able to:

- (a) access, distribute and use services and applications of their choice available on the Internet, subject to reasonable and non-discriminatory² network management;
- (b) connect devices of their choice to the Internet, provided that such devices do not harm the network; and
- (c) have access to information on the network management practices of their Internet access service supplier.

Article 11

Cooperation

1. Recognising the global nature of digital trade, the parties shall cooperate on regulatory issues and best practices through the existing sectoral dialogues, which shall, inter alia, address the following issues:
 - (a) the recognition and facilitation of interoperable cross-border electronic trust and authentication services;
 - (b) the treatment of direct marketing communications;
 - (c) the challenges for small and medium enterprises in the use of electronic commerce;
 - (d) the protection of consumers and the building of consumer confidence in the ambit of electronic commerce;
 - (e) common cyber security issues; and
 - (f) any other issue relevant for the development of digital trade.

Such cooperation shall focus on the exchange of information and views on the Parties' respective legislation on these issues as well as on the implementation of such legislation.

2. The parties affirm the importance of actively participating in multilateral fora to promote the development of digital trade.

ARTICLE XX

Review clause on Data Flows

² Subject to the exception provided for in national laws and regulations of each Party.

Modernisation of the Trade part of the EU-Mexico Global Agreement

Without Prejudice

The Parties shall reassess within three years of the date of entry into force of this Agreement the need for inclusion of provisions on the free flow of data into this Agreement.