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COVER NOTE

From: Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director

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To: Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union

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Subject: Recommendation for a COUNCIL DECISION authorising the opening of negotiations for digital trade disciplines with the Republic of Korea and with Singapore

Delegations will find attached document COM(2023) 230 final.

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Brussels, 14.4.2023
COM(2023) 230 final

Recommendation for a
COUNCIL DECISION
**authorising the opening of negotiations for digital trade disciplines with the Republic of
Korea and with Singapore**

{SWD(2023) 85 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

The digitalisation of the economy changes the scale, scope and speed of international trade. It allows businesses to reach and sell goods and services to a larger number of customers around the world and greatly enhance consumer's choice. It also allows businesses to use new and innovative digital tools to overcome barriers to growth. In particular small and medium enterprises (SMEs) benefit from these opportunities and can become more integrated in global value chains.

Trade in goods and services enabled by electronic means ('digital trade'¹) is growing in importance on a global scale. Digital trade encompasses both the physical delivery of goods and services the purchase of which is enabled digitally (such as the purchase of a book through an internet platform) as well as the digital delivery of goods and services (such as software, e-books or data flows), involving both business-to-business as business-to-consumer transactions. It has been estimated that in 2019 the global value of e-commerce reached EUR22 trillion, an increase of 4% from 2018, which represented about 30% of the global Gross Domestic Product (GDP).²

Existing international trade rules do not always take account of the specific nature of digital trade, which creates uncertainty for businesses about the rules that will affect their operations and investments in third countries and for customers about the rules that will apply to their transactions. There is a growing number of national rules regulating the digital economy that may create unjustified barriers to digital trade. In order to improve legal certainty for business and to facilitate digital trade, countries around the world have sought to establish digital trade rules. In 2019, members of the World Trade Organisation (WTO) commenced plurilateral negotiations on e-commerce.³ In recent years an increasing number of regional and bilateral agreements on digital trade have also been developed.⁴ While the EU has not so far engaged into bilateral sectoral negotiations on digital trade agreements, the EU has concluded Free Trade Agreements including comprehensive rules on digital trade with the United Kingdom, with Chile, and with New Zealand.⁵

In the September 2021 EU strategy for cooperation in the Indo Pacific, the Commission and the High Representative for Foreign Affairs and Security Policy announced the intention to

¹ Internationally often used interchangeably with 'e-commerce'.

² United Nations Conference on Trade and Development (UNCTAD), Estimates of global e-commerce 2019 and preliminary assessment of Covid-19 Impact on online retail 2020, May 2021, www.unctad.org - \$26.7 trillion with an average USD/EUR exchange rate of 1.2093 in 2019.

³ Joint Statement on electronic commerce of 25 January 2019, [WT/L/1056](https://www.wto.org/press/pr/2019/190125_e-commerce.htm).

⁴ In June 2020, Singapore, Chile and New Zealand signed a Digital Economy Partnership Agreement (DEPA) with Chile and New Zealand. Korea requested to participate in DEPA in September 2021, China requested to participate in October 2021 and Canada in May 2022. See for instance also the Singapore-Australia Digital Economy Agreement (entered into force in December 2020), the Singapore-UK Digital Economy Agreement (entered into force in June 2022) and the Singapore-Korea Digital Partnership Agreement (signed on 21 November 2022).

⁵ Trade and cooperation agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, OJ L 149, 30.4.2021, p 10–2539; European Commission, EU-Chile: Text of the Agreement, <https://policy.trade.ec.europa.eu>, European Commission, EU-New-Zealand: Text of the Agreement, <https://policy.trade.ec.europa.eu/>

formalise Digital Partnerships with some of the EU's key partners in the region, including notably with Singapore and with the Republic of Korea. The EU launched a Digital Partnership with the Republic of Korea on 28 November 2022 and with Singapore on 1 February 2023. These Partnerships have an important trade-aspect and include Digital Trade Principles as a key deliverable. Although non-binding in nature, the Digital Trade Principles have a significant political value, as they reflect a common understanding on the most relevant digital trade issues. The EU signed the Digital Trade Principles with the Republic of Korea on 30 November 2022 and with Singapore on 31 January 2023. The Digital Trade Principles signed have demonstrated a high level of convergence of both countries with the EU's approach to digital trade.

The bilateral trade relations between the EU and the Republic of Korea and Singapore have already been liberalised and enhanced by the Free Trade Agreements (FTAs) concluded between the EU and the Republic of Korea in 2011 and between the EU and Singapore in 2019.⁶ Although these are comprehensive FTAs that provide for substantial commitments for trade in goods and services between the parties, they do not provide for comprehensive rules on digital trade, as the EU did not propose such rules in this regard to its negotiating partners at the time of the negotiations of these FTAs. The EU has since then developed further rules on digital trade that apply to its bilateral relations with several trading partners, including with the United Kingdom, Chile, and New Zealand.

The EU and the Republic of Korea, and the EU and Singapore are key partners in the Indo Pacific region. Moreover, the 2010 Framework Agreement between the EU and the Republic of Korea, creating a strategic partnership, provides a basis for strengthened economic and political cooperation.⁷ The EU and the Republic of Korea, and the EU and Singapore have a deep and dynamic economic relationship. On the basis of the EU-Singapore FTA and Investment Protection Agreement, Singapore has become the EU's largest trade and investment partner in Southeast Asia. In 2021, it had the world's eleventh largest Gross Domestic Product (GDP) per capita and it ranked sixth in terms of ICT adoption and digital skills in the 2020 World Economic Forum (WEF) Global Competitiveness Report.⁸ In 2020 the annual EU-Singapore trade in goods and services was valued at over €90 billion. Singapore is one of the most open and digitised economies in the world. South Korea is also a key partner for the EU in the Indo-Pacific region. Its economy has shown rapid growth since the 1960s, to become the tenth largest in the world in 2021 in terms of GDP. It ranked first in the 2020 WEF Global Competitiveness Report in terms of ICT adoption and tenth in terms of digital skills.⁹ In 2020 the annual EU-Republic of Korea trade in goods and services was valued at over €120 billion. Negotiating digital trade rules with Singapore and with the Republic of Korea has a big potential to create new opportunities for EU businesses and consumers. It will facilitate the operation of EU businesses in those countries, notably for micro, small and medium enterprises, and will strengthen EU consumer's trust in the online environment.

⁶ Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part, OJ L 127, 14.5.2011, p. 1–1426; Free trade Agreement between the European Union and the Republic of Singapore, OJ L 294, 14.11.2019, p. 3–755.

⁷ Framework Agreement between the European Union and its Member States, on the one part, and the Republic of Korea, on the other part, OJ L 020, 13.1.2013, p. 2-24.

⁸ World Economic Forum (WEF), The Global Competitiveness Report, 2020, www.weforum.org

⁹ Ibid.

- **Consistency with existing policy provisions in the policy area**

The initiative builds on the Treaty on the European Union (TEU) that provides that the EU should ‘encourage the integration of all countries into the world economy, including through the progressive abolition of restrictions on international trade’.

It also builds on the September 2021 EU strategy for cooperation in the Indo Pacific that recognises that the region is at the forefront of the digital economy and proposes establishing Digital Partnerships with the Republic of Korea, Singapore and Japan.¹⁰

The initiative is consistent with the Commission’s February 2021 Trade policy review, which announces the intention to step up bilateral engagement and explore stronger frameworks for cooperation on trade-related digital issues with like-minded partners and to deepen its regulatory dialogues with like-minded partners.¹¹

It is consistent with the FTAs that already enhanced and liberalised the bilateral trade relations between the European Union and the Republic of Korea, and between the European Union and Singapore, but which do not provide for comprehensive rules on digital trade.

The proposal is consistent with and builds on the Digital Partnerships and Digital Trade Principles launched with the Republic of Korea, and with Singapore, which demonstrate a high level of convergence between the approaches to digital trade of the EU and these countries. The initiative does not restrict ongoing or future cooperation between the EU and these countries in the context of the Digital Partnerships.

The initiative takes into account the progress made thus far in the ongoing negotiations on e-commerce amongst WTO members.

The EU systematically puts forward ambitious regulatory disciplines on digital trade in its free trade negotiations. The negotiating directives proposed follow the same approach as the EU follows in its FTA negotiations, including most recently with the United Kingdom in the EU-UK Trade and Cooperation Agreement, with Chile in the EU-Chile Advanced Framework Agreement, and with New Zealand for the EU-New Zealand FTA.

- **Consistency with other Union policies**

The disciplines proposed by the negotiating directives build on, and are fully in line with, the EU’s internal market legislation in the area of digital trade. The proposed negotiating directives also confirm that any rule or commitment agreed upon by the EU should be in line with the EU legal framework and should preserve the policy space required to implement the EU Digital strategy.

The proposed negotiating directives are consistent with the Declaration on European digital rights and principles as signed by the European Parliament, the Council and the European Commission on 15 December 2022, which the EU aims to promote in its international trade relations.¹²

¹⁰ JOIN(2021) 24 final (16.9.2021).

¹¹ COM(2021) 66 final (18.2.2021).

¹² European Declaration on Digital Rights and Principles for the Digital Decade 2023/C 23/01, OJ C 23, 23.1.2023, p. 1-7.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

Article 218(3) TFEU provides that the Commission shall submit recommendations to the Council, which shall adopt a decision authorising the opening of negotiations and nominating the Union negotiator. According to Article 218(4) of the TFEU, the Council may address directives to the negotiator and designate a special committee in consultation with which the negotiations must be conducted.

- **Subsidiarity (for non-exclusive competence)**

According to Article 5(3) of the TEU, the subsidiarity principle does not apply in areas of exclusive EU competence. The common commercial policy is an area of exclusive competence of the Union under Article 3 of the TFEU.

- **Proportionality**

This initiative does not go beyond what is necessary to achieve the policy objectives at stake.

- **Choice of the instrument**

A Commission Recommendation for a Council Decision authorising the opening of negotiations is in line with Article 218(3) of the TFEU, which provides that the Commission shall submit recommendations to the Council, which shall adopt a decision authorising the opening of negotiations.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

Not applicable.

- **Stakeholder consultations**

Stakeholder engagements on digital trade in relation to the Republic of Korea and Singapore have taken place in the context of the preparation and negotiation of the Digital Partnerships and the Digital Trade Principles.

Further public consultation on this initiative have not been necessary, since the key principles underpinning the proposed negotiations are already contained in the Digital Trade Principles with the Republic of Korea and with Singapore and reproduce disciplines that the EU has already included in its existing FTAs with the United Kingdom, with Chile and with New Zealand and also pursues in the negotiations on e-commerce within the WTO. Further substantive elements that may arise during the negotiations are not known in advance.

The Commission regularly consults stakeholders *inter alia* in the context of the Civil Society Dialogue.¹³

- **Collection and use of expertise**

Not applicable.

¹³ European Commission, EU trade meetings with Civil Society, <http://trade.ec.europa.eu/>

- **Impact assessment**

An impact assessment has not been carried out since it is particularly difficult to measure the economic impact of the initiative as compared to the existing situation, given that the digital trade rules envisaged will facilitate the bilateral trade relations that have already been liberalised and enhanced by the existing FTAs with the Republic of Korea and with Singapore. Such FTAs already include comprehensive provisions on market access for trade in both goods and services and the initiative will thus primarily have an impact in terms of granting additional legal certainty to the operators engaging in digital trade in the liberalised sectors. Moreover, there is little choice for the EU as the intended disciplines for the negotiations are very similar to those already included in the FTAs concluded between the EU and the United Kingdom, between the EU and Chile and between the EU and New Zealand, and also those pursued by the EU in the plurilateral digital trade negotiations in the WTO. Any additional substantive proposals that the other parties may make cannot be identified and assessed ex ante. The initiative is accompanied by a staff working document that describes the context in which the negotiations will take place, highlighting the increasing importance of digital trade and the efforts of countries around the world to develop international rules in this area. It also presents the different approaches to digital trade rules adopted by the European Union, the Republic of Korea and Singapore.

- **Regulatory fitness and simplification**

Not applicable.

- **Fundamental rights**

The initiative fully respects the Charter of Fundamental Rights of the European Union, and in particular Article 8 on the protection of personal data.

4. BUDGETARY IMPLICATIONS

The initiative does not have budgetary implications.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The negotiations are expected to be concluded in 2024.

- **Explanatory documents (for directives)**

Not applicable.

- **Detailed explanation of the specific provisions of the proposal**

The provisions aim to recommend the adoption by the Council of a decision authorising the opening of negotiations and nominate the Union negotiator. The Council may address directives to the negotiator.

Recommendation for a

COUNCIL DECISION

authorising the opening of negotiations for digital trade disciplines with the Republic of Korea and with Singapore

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 218(3) and (4) thereof,

Having regard to the recommendation from the European Commission,

Whereas:

- (1) The European Union and the Republic of Korea, and the European Union and Singapore, respectively, have a deep and dynamic economic relationship. The Republic of Korea and Singapore are close strategic partners of the European Union in the Indo-Pacific region and significant trading partners for the European Union in Asia. The European Union has had a Free Trade Agreement with the Republic of Korea since 2011 and a Free Trade Agreement with Singapore since 2019. These Free Trade Agreements provide for substantial commitments for trade in goods and services between the parties, but they do not include comprehensive rules on digital trade.
- (2) In line with the September 2021 European Union strategy for the Indo-Pacific, the European Union has sought deeper cooperation with the Republic of Korea and with Singapore on digital trade. The European Union and the Republic of Korea entered into a Digital Partnership on 28 November 2022 and in that context agreed non-binding Digital Trade Principles on 30 November 2022. The European Union and Singapore entered into a Digital Partnership on 1 February 2023, and agreed non-binding Digital Trade Principles on 31 January 2023.
- (3) The Digital Trade Principles agreed with the Republic of Korea and with Singapore demonstrate a high level of convergence with the European Union's approach to digital trade.
- (4) The European Union has agreed digital trade rules in several bilateral free trade agreement negotiations with third countries. The European Union is also participating in a number of negotiations as part of which digital trade rules are being developed, the ongoing negotiations on electronic commerce within the WTO. Therefore, it is appropriate to authorise the Commission to open negotiations on binding digital trade disciplines that are coherent with these agreements and pursue the same objectives that the European Union intends to achieve in the ongoing negotiations,

HAS ADOPTED THIS DECISION:

Article 1

The Commission is hereby authorised to negotiate, on behalf of the Union, digital trade disciplines with the Republic of Korea and with Singapore.

Article 2

The negotiating directives addressed to the Commission for the negotiation of digital trade disciplines with the Republic of Korea and with Singapore are set out in the addendum to the decision.

Article 3

The negotiations shall be conducted in consultation with the [name of the special committee to be inserted by the Council].

Article 4

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*