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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:	ANNEX to the 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 - ANNEX.

Encl.: COM(2023) 230 final - ANNEX



Brussels, 14.4.2023
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ANNEX

ANNEX

to the

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}

ADDENDUM

DIRECTIVES FOR THE NEGOTIATION OF DIGITAL TRADE DISCIPLINES WITH THE REPUBLIC OF KOREA AND WITH SINGAPORE

1. NATURE AND SCOPE OF THE PROVISIONS

- (1) The negotiations aim to establish disciplines on trade in goods and services enabled by electronic means ('digital trade') between the Republic of Korea and the EU, and between Singapore and the EU. Such disciplines should facilitate the bilateral trade relations between the European Union and the Republic of Korea, and between the European Union and Singapore. These relations have already been enhanced and liberalised by the Free Trade Agreements (FTAs) concluded between the EU and both countries. The disciplines should be consistent with the rules set out in these FTAs and build on the high level of convergence on digital trade issues reflected in the Digital Trade Principles signed between the EU and the Republic of Korea in November 2022 and between the EU and Singapore in January 2023. Those Principles are key deliverables of the Digital Partnerships that the EU concluded with both countries.
- (2) The negotiations aim at enhancing bilateral digital trade, facilitating the operations of businesses, including micro, small and medium enterprises, in particular, by strengthening consumers' trust in the on-line environment and by creating new opportunities to promote inclusive growth and development.
- (3) The negotiations also aim to support open digital markets which are competitive, transparent, fair, and free of unjustified barriers to international trade and investment.
- (4) The disciplines should build on existing World Trade Organisation (WTO) rules and obligations. They should take into account, and build on, where possible and relevant, recent and ongoing trade and investment negotiations at bilateral and multilateral level.
- (5) In the negotiations, the Union will promote the rights and principles set out in the European Declaration on Digital Rights and Principles for the Digital Decade as proclaimed by the European Parliament, the Council and the European Commission on 15 December 2022.

2. PROPOSED CONTENT OF THE RULES AND COMMITMENTS

- (1) The negotiations should develop disciplines on aspects of digital trade. These should aim to improve the conditions for digital trade for the benefit of businesses and consumers in the European Union, and to increase the participation of micro, small and medium enterprises in global value chains.
- (2) The negotiations should be conducted in an open manner. Therefore, they may cover any aspect of digital trade that is agreed by the parties to the negotiations.
- (3) Recognising the crosscutting nature of digital trade, the negotiations may cover:
 - (a) facilitation of electronic transactions (e.g. electronic signatures, electronic authentication);
 - (b) customs duties on electronic transmissions and the transmitted content;

- (c) consumer trust (e.g. online consumer protection, unsolicited electronic communications);
 - (d) cross-border data flows with trust, data localisation requirements and personal data protection;
 - (e) business trust (e.g. protection of computer source code, forced technology transfer);
 - (f) improved access to electronic commerce (e.g. access to the internet, online content and government data or the liability of and access to online intermediaries);
 - (g) trade facilitation measures relevant for electronic commerce (e.g. paperless trading, e-invoicing), taking due account of the WTO Agreement on Trade Facilitation;
 - (h) electronic commerce-related aspects of intellectual property rights, including trade secrets;
 - (i) transparency; and
 - (j) cooperation (e.g. between parties to the negotiations, consumer protection authorities).
- (4) Any rule or commitment agreed upon by the European Union should be in line with the EU legal framework and should preserve the regulatory autonomy required to implement and develop the EU data and digital policies.
- (5) In particular, the European Union shall not agree to disciplines or commitments that could affect its legal framework on cybersecurity, notably on a high common level of security of networks and information systems across the European Union.
- (6) In the context of the increasing digitalisation of trade and the importance of international transfers of data flows for cross-border trade and investment, the European Union approach in these negotiations has to be coherent with the approach followed in this regard in concluded and, where relevant and as appropriate, recent and ongoing negotiations for bilateral and multilateral trade and investment agreements. In particular, the negotiations should result in rules covering cross-border data flows addressing unjustified data localisation requirements, while neither negotiating nor affecting the EU's personal data protection rules and should, notably be in line with the EU legal framework on the protection of personal and non-personal data.
- (7) The European Union and its Member States shall maintain the possibility to preserve and develop their capacity to define and implement cultural and audio-visual policies for the purposes of preserving their cultural diversity. The European Union shall not agree to rules or commitments for audio-visual services. The European Union shall not take commitments on services supplied or activities performed in the exercise of governmental authority.
- (8) Furthermore the European Union shall not agree to disciplines or commitments that could affect its legal framework on the protection of intellectual property rights.
- (9) The rules and commitments should not prevent the European Union, its Member States and their national, regional and local authorities from regulating economic activity in the public interest, to achieve legitimate public policy objectives such as the protection and promotion of public health, social services, public education,

safety, the environment, public morals, social or consumer protection, ensuring the integrity and stability of the Union's financial system, privacy and personal data protection and the promotion and protection of cultural diversity. The high quality of the public services in the European Union should be preserved in accordance with the Treaty on the Functioning of the European Union, and in particular with Protocol No. 26 on Services of General Interest, and take into account the European Union's reservations in this area, including pursuant to the GATS.