

The EU's digital trade policy

SUMMARY

Digital trade has become a key element in the EU's trade policy. Every modern trade agreement that the EU has concluded contains a dedicated digital trade chapter. The digital trade provisions in EU trade agreements have evolved over time, which reflects the increasing role digital trade plays today in the world economy. While there is no clear measurement of digital trade yet, the OECD estimates nevertheless that digital trade represents around 25 % (in 2020) of total trade.

The EU, as the world's largest exporter and importer of digitally deliverable services, has a strong market position. Therefore, the development towards more digital trade provides opportunities for European consumers and the economy. In order to exploit the full potential of digital trade, it is essential to overcome fragmentation and set international standards and common digital trade rules. The EU aims to shape digital trade rules at the WTO and through free trade agreements.

Moreover, the EU's digital trade policy is an important instrument for its green and digital transition. The European Commission stated in its 2021 'Trade Policy Review – An Open, Sustainable and Assertive Trade Policy' that the Union's (multilateral and bilateral) trade policy – as a priority – should support Europe's green and digital agenda and pursue the objective of ensuring a leading position for the EU in digital trade.

The key difference between digital trade and traditional trade is the prominence of cross-border data flows. The free flow of data is key for economic growth and can increase the benefits from digital trade. However, certain data are considered 'sensitive' and require protection and/or specific processing conditions. The absence of comprehensive, binding multilateral rules specifically for cross-border data flows and privacy is challenging. That is why 87 WTO Members, including EU Member States, are currently engaged in e-commerce negotiations at the WTO.

Most recently, the EU started to strengthen its digital ties with like-minded partners. In April 2023, the Council of the EU authorised the Commission to open negotiations on digital trade principles with Singapore and the Republic of Korea.



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Introduction

The digital transformation of the economy has changed the [scale, scope and speed](#) of the global trading system. According to the Organisation for Economic Co-operation and Development ([OECD](#)), digitalisation has led to more digitally ordered parcels, more digitally delivered services, more data crossing international borders and also more traditional trade. As the world's largest exporter and importer of [services](#), this development provides both opportunities and challenges for the EU. Therefore, the EU has a strong interest in ensuring market access for digital goods and services in third countries and in overcoming trade barriers and global fragmentation in digital trade rules by setting international standards.

The [COVID-19 pandemic](#) has further accelerated digital transformation, highlighting the importance of digital trade. It became clear that digital solutions are increasingly needed – for example, for telemedicine, telework and online education.

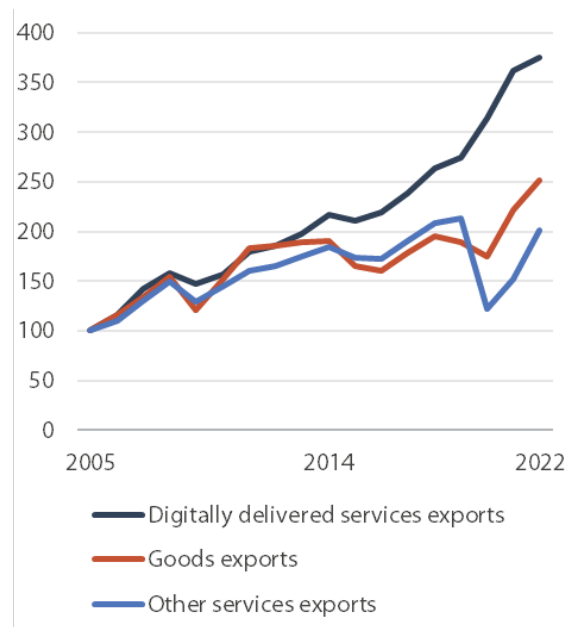
Recent technological developments, such as those on [generative](#) Artificial Intelligence (AI), are further accelerating and affecting the digital transformation. Online and [e-commerce](#) platforms play an increasingly important role in people's social and economic lives: with over [five billion internet users](#) worldwide, equivalent to 65.7 % of the world's population, the number of people making purchases online is ever-increasing. The volume of physical goods that businesses and consumers order online increased by [58 %](#) in 2020 alone. This development also implies a series of necessary adjustments – for example, the rise of e-commerce requires the [EU internal VAT](#) (value added tax) system to adapt and modernise. E-commerce sales from third countries represent a considerable share of overall online purchases in the EU; in 2022, 18.5 % of EU e-shoppers bought or ordered goods and services from a non-EU seller.

Overall, the world's connected population grew by 189 million internet users from October 2022 to October 2023, an annual growth rate of 3.7 %. The [United Nations \(UN\) target](#) is that every person on the planet has access to the internet, including meaningful use of digitally enabled services, by 2030. It is [estimated](#) that, by 2030, the number of devices connected to the internet will have reached 125 billion, up from 27 billion in 2017.

There is no clear measurement of digital trade, and digitalisation remains largely [invisible](#) in official trade statistics. However, the [OECD](#) estimates that digital trade represents around [25 %](#) (in 2020) of total trade. Globally, trade in commercial (digital and analogue) services has nearly [doubled](#) since 2010, from US\$3.9 trillion to US\$7.1 trillion in 2022. The United Nations Conference on Trade and Development ([UNCTAD](#)) estimates that digitally deliverable service exports (services that can be delivered remotely over computer networks) amounted to US\$3.9 trillion, which accounts for a [54 % share](#) of total global services exports.

The increasing importance that the EU attaches to the digitalisation of the economy is reflected in the EU's trade policy, for which the Commission [set out](#) the objective of supporting the green and digital transformation of the EU economy. In order to ensure a leading position for the EU in digital trade, the EU is aiming to shape digital trade rules – in particular at the World Trade Organization (WTO) – through its bilateral trade agreements and, most recently, in self-standing bilateral digital trade agreements with like-minded partners.

Figure 1 – Global exports of digitally delivered services



Data source: [Global Trade Outlook and Statistics](#), WTO, October 2023 update.

What is digital trade?

There is [no recognised international definition](#) of digital trade; the key difference compared to traditional trade in goods and services is the [prominence of cross-border data flows](#). Generally, trade is considered to be digital if parts of the transaction are conducted through digital means. Digital trade is often equated with e-commerce; however, [e-commerce](#), usually defined to encompass the delivery of goods ordered online, is part of the larger category of digital trade. The [OECD](#) defines digital trade as a modern take on the [WTO definition of e-commerce](#) agreed under the Work Programme on Electronic Commerce: the 'production, distribution, marketing, sale or delivery of goods and services by electronic means'. The [WTO](#) also stresses that digital trade goes beyond trade in services as it includes goods that are wholly or partially ordered or delivered through digital means. The EU has a similar [definition](#) of digital trade: 'Digital trade refers to commerce enabled by electronic means – by telecommunications and/or ICT services – and covers trade in both goods and services.'

[Experts point out](#) that goods and services that are physically delivered across borders do not differ according to whether the transaction that enables the trade is digital or not. Digitalisation can facilitate the transaction, but it has not changed the nature of trade. The situation is different for digitally enabled and delivered trade in goods and (mainly) services. Here, digitalisation has created entirely new opportunities for international trade, mainly in services that could not be traded previously. Digital delivery includes services traded cross-border through computer networks, that is through the internet, apps, emails, voice and video calls, and increasingly through digital intermediation platforms such as online gaming, music and video streaming, and remote learning.

As digital trade covers [different methods](#) of trading goods and services, its total value is not captured by one statistic. [UNCTAD](#) points out that the traditional international trade statistics still focus almost exclusively on what is being traded and who is involved, making it difficult to measure the size and composition of digital trade. Against this background, the OECD, WTO and IMF produced a [Handbook](#) on Measuring Digital Trade in 2019. The Handbook formalised, for the first time, a statistical definition of digital trade, which focuses on the nature of the transaction: 'digital trade is all international trade that is digitally ordered and/or digitally delivered'. The European Commission announced in its 2021 [Trade Policy Review – An Open, Sustainable and Assertive Trade Policy](#) that it would create a European [analytical framework](#) for the measurement of data flows.

The EU's internal and external digital agenda

The European Commission has declared the years 2020-2030 to be the '[Digital Decade](#)' and set the objective of achieving the [digital transformation](#) to empower a more digitally sovereign, resilient, and competitive EU. The digital transformation as a key enabler of sustainable development should also help to achieve the EU's target of climate-neutrality by 2050. It is worth noting in this regard that, according to the [World Economic Forum](#) (WEF), digital technology can help to reduce global emissions by 15 % through solutions in, for example, energy, manufacturing, agriculture, transportation and traffic management.

The strategic communication on [Shaping Europe's digital future](#) (2020) was further complemented by the 2021 [Digital Compass: the European way for the digital decade](#), which sets out the Commission's vision for the EU's digital transition by 2030 and the specific actions it will undertake to aid the creation of safe and secure digital services and markets. On that basis, the EU has adopted legislation governing aspects of the digital economy such as the [Data Governance Act](#), the [Digital Services Act](#) and the [Digital Markets Act](#). The Commission also recently proposed new rules relevant to the digital economy, including, for example, a [Data Act](#), an [Artificial Intelligence Act](#), an [Artificial Intelligence Liability Directive](#) and a [Cyber Resilience Act](#).

EU data protection policy

Data are considered to be an [essential resource](#) for economic growth, competitiveness, innovation, and job creation in particular. However, many countries have put forward regulations to constrain data flow in order to deal with the challenges of privacy, national security and intellectual property, or for economic reasons such as protecting domestic jobs. In particular, certain [personal data](#), such as revealing racial or ethnic origin, political opinions, health-related data or data concerning a person's sexual orientation, is considered 'sensitive' and requires protection and/or specific processing conditions. On the other hand, an overly [restrictive approach](#) towards the free flow of data could weaken trade flows and limit the economic and social benefits for all. The [Digital Policy Alert Activity Tracker](#) revealed that, since January 2020, there have been 3 799 policy or regulatory changes in the EU, G20 governments and Switzerland. These interventions span a wide range of areas, including data governance, consumer protection, online content moderation, competition, taxation, and international trade.

The EU aims to safeguard the balance between the free flow of data and the preservation of privacy, security, safety and ethical standards. In this regard, in February 2020 a [European strategy for data](#) was published. A cornerstone of the strategy is the European Data Governance Act ([Regulation \(EU\) 2022/868](#)), which entered into force on 23 June 2022, and which has been [applied](#) as of 24 September 2023. Complementary legislation and initiatives across the single market, such as the above-mentioned Digital Services Act (DSA) and Digital Markets Act (DMA) and the European [Declaration](#) on Digital Rights and Principles, aim to create a safer and more open digital single market, protecting users' fundamental rights and establishing a level playing field for businesses.

European Parliament's position

Parliament has long been an advocate for the protection of personal data in free trade agreements. As early as 2017, Parliament stressed, in its [resolution](#) entitled 'Towards a digital trade strategy', the importance of the protection of data for any EU trade agreement and said that nothing in trade agreements should prevent the EU and its Member States from maintaining, improving and applying its data protection rules. It also called on the Commission to strictly prohibit unjustified data localisation requirements in free trade agreements.

An example of how sensitive Parliament is to the protection of data in trade agreements is the [Anti-Counterfeiting Trade Agreement \(ACTA\)](#) (negotiated between the EU, Australia, Canada, Japan, South Korea, Mexico, Morocco, New Zealand, Singapore, Switzerland and the United States). In fact, one of the reasons why, in 2012, Parliament rejected the plurilateral trade agreement that aimed to enforce intellectual property rights more effectively was that Parliament, and also many civil society organisations, thought the agreement failed to sufficiently protect sensitive personal information. Formal negotiations on ACTA were launched in October 2007 and concluded after 11 rounds in October 2010 in Tokyo.

As mentioned above, the free flow of data can increase the benefits from trade, provided that the online ecosystem remains trustworthy, and online consumers do not face risks that their data will be used for reasons beyond their knowledge and control. Article 207(3) of the Treaty on the Functioning of the European Union (TFEU) provides that negotiated agreements must be in line with the EU's internal policies and rules. Thus, any trade agreement to which the EU would be a signatory has to [comply with EU law](#), including the right to data protection as set out in Article 16 TFEU and Article 8 of the [Charter of Fundamental Rights](#). Trust is a fundamental factor for the growth and success of online trade.

The exchange of data across borders and the existence of a multi-layered landscape of policies and regulations governing cross-border data flows increased concerns for governments, businesses, and citizens. In fact, there is [no globally accepted standard](#) or definition of data privacy in the online world, and there are no comprehensive binding multilateral rules specifically for cross-border data flows and privacy.

China's data protection framework, for example, differs from the EU's [General Data Protection Regulation](#) (GDPR), which provides the framework for the free flow of data in the EU; [experts](#) point out that China has methodically increased control over data flows since 2014. The country's stringent data localisation requirements have negative implications for EU companies, global trade and investment. However, even between like-minded partners standards differ: unlike the EU, [the US](#) (at the federal level) does not comprehensively regulate the collection and use of consumers' personal data.

The European Commission decides, on the basis of [Article 45](#) of the [regulation](#) on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, whether a country outside the EU offers an adequate level of data protection. The effect of such a decision is that personal data can flow from the EU to that third country without any further safeguard being necessary.

The Commission has so far [recognised](#) Andorra, Argentina, Canada (commercial organisations), the Faroe Islands, Guernsey, Israel, the Isle of Man, Japan, Jersey, New Zealand, the Republic of Korea, Switzerland, the United Kingdom, the United States (commercial organisations participating in the EU-US Data Privacy Framework) and Uruguay as providing adequate protection. However, the European Parliament concluded, in its [resolution](#) of 11 May 2023 on the adequacy of the protection afforded by the EU-US Data Privacy Framework, that the EU-US Data Privacy Framework fails to create essential equivalence in the level of protection, and called on the Commission to continue negotiations with its US counterparts with the aim of creating a mechanism that would ensure such equivalence.

Shaping a rules-based global digital economy

In geopolitical terms, the European Union supports a rules-based global digital economy. In fact, the EU aims to become a global role model for the [digital economy](#), supporting developing economies in going digital, and develop digital standards and promote them internationally. In its 2020 communication on [shaping Europe's digital future](#), the Commission outlined that the EU should leverage its regulatory power, strong industrial and technological capabilities, diplomatic strengths and external financial instruments to advance the European approach and shape global interactions, making use of association and trade agreements, as well as agreements reached in international bodies such as the United Nations, the OECD and the G20.

The EU is committed to making digital cooperation central to its external relationships, focusing on several [geographical areas](#), such as the EU neighbourhood, developing countries in Africa and the Mediterranean and developed countries such as the US and Japan. In addition to the Global Gateway (see box), the EU aims to strengthen its digital connectivity globally with like-minded partners through [digital partnerships](#) to advance cooperation in several crucial digital areas – including AI, secure international connectivity, cyber security, and digital economy, as well as

Global Gateway

With the [Global Gateway](#), the EU aims to boost smart, clean and secure links in digital, energy and transport sectors across the world, mobilising up to €300 billion in investments. One of the priorities of the Global Gateway is to strengthen global digital connectivity. The Commission is working to reinforce ties with third countries, using a global and secure network of submarine cables to support the EU's digital resilience and reduce dependencies by means of promoting the diversification of international routes. One example is the [BELLA](#) (Building the Europe Link to Latin America and the Caribbean) programme, which establishes a digital bridge between Europe and Latin America through a 6 000 km submarine fibre-optic cable, helping to boost smart, clean and secure digital, energy and transport links. On 14 March 2023, the EU and Latin America and the Caribbean launched the [Digital Alliance](#), an initiative that seeks to champion a human-centric approach to digital transformation. An initial contribution of €145 million from Team Europe includes €50 million from the EU budget to boost digital cooperation between both regions.

trusted data flows and data innovation, standards – and with the objective of building alliances in international organisations.

In the 2021 [Indo-Pacific strategy](#), the EU set the goal of fostering cooperation for a safe and secure digital space through digital governance and partnerships. Currently, the EU has digital partnerships with Japan, Korea, Singapore and Canada. The digital partnerships complement the free trade agreements (FTAs), namely the [EU-Canada Comprehensive Economic and Trade Agreement \(CETA\)](#) (provisionally applied since 2017), the [EU-Japan Economic Partnership Agreement](#) (in force since 1 February 2019), the [EU-Singapore Trade and Investment protection agreements](#) (in force since 21 November 2019) and the [EU-Republic of Korea](#) FTA (formally ratified in December 2015).

The first digital partnership was concluded in May 2022 with [Japan](#) during the 28th EU-

Japan Summit. On 1 February 2023, the [EU-Singapore Digital Partnership](#) was signed, continuing to strengthen the EU's partnerships in Asia. In November 2022, a partnership with the [Republic of Korea](#) was launched to advance cooperation for an inclusive and resilient digital transformation. The EU and [Canada](#) launched a digital partnership on 24 November 2023 at the 19th EU-Canada Summit. The partnerships establish an annual high-level meeting – the [Digital Partnership Council](#) – led by Commissioner Thierry Breton on the EU side and the relevant minister for each of the four partner countries. The digital partnerships address digital trade and include non-binding [digital trade principles](#) that reflect a common understanding on key issues relevant to digital trade. The digital trade principles cover data governance (including free flow of data with trust, and open government data), digital trade facilitation (including paperless trading, single windows, electronic contracts, electronic authentication and electronic signatures, and electronic invoicing), consumer trust (including online consumer protection and safety), and business trust (including open internet access, cybersecurity, and protection of source code and cryptography-related technology).

The EU's approach towards digital trade

Europe's position in digital trade is strong: the EU [exported](#) digitally deliverable services valued at US\$314 billion in 2010, which increased to US\$770 billion in 2022. The EU-27 exported more digitally deliverable services than the United States and about three times as much as India and China. On the other hand, the EU-27 has been the largest importer of digitally deliverable services over the last decade. This underlines the market power of the EU in digital trade. While there is a lot of potential and economic opportunities for the EU in the digital trade sector, it is also clear that competitors are becoming stronger. It is

The EU's approach to shaping digital trade:

- Multilateral and plurilateral trade agreements, e.g. Joint Initiative on e-commerce in the WTO.
- Comprehensive digital trade chapters in EU free trade agreements, e.g. EU-New Zealand FTA.
- Digital partnerships and trade principles with like-minded partners: Japan, Canada, Singapore and the Republic of Korea.
- Negotiations on bilateral digital trade agreements with Singapore and the Republic of Korea.

estimated that [85 %](#) of future economic growth will take place outside of the EU, much of it in the digital sector.

The geography of digital trade is shifting, particularly to the Indo-Pacific region, which has witnessed the largest increases in digital trade exports over the past 25 years, with an overall share of 18 % of global digital trade. According to the WTO, in 2022 almost a quarter of [digitally delivered services](#) originated from Asian economies. In total, the share of developing countries increased from 19 % in 2010 to 24 % in 2022, with China accounting for a notable portion. However, growth in [least developed countries](#) (LDCs) continues to lag behind.

The European Commission stated in its 2021 [Trade Policy Review – An Open, Sustainable and Assertive Trade Policy](#) that the Union's (multilateral and bilateral) trade policy should – as a priority – support Europe's digital agenda and pursue the objective of ensuring a leading position for the EU in digital trade. The EU wants to achieve this goal, among other things, by seeking the rapid conclusion of an ambitious and comprehensive WTO agreement on digital trade, including rules on data flows, in full compliance with the EU's data protection framework. Moreover, the Commission set out the objective of exploring the possibility of closer regulatory cooperation with like-minded partners on issues of relevance for digital trade.

European Parliament's position

As early as 2017, the [European Parliament](#) stressed, in its resolution entitled 'Towards a digital trade strategy', the importance of digital trade and pointed out that technological developments, access to the open internet and the digitalisation of the economy are an engine for growth as they enable companies – particularly start-ups, micro-enterprises and SMEs – to create new opportunities in developing, ordering, producing, marketing and delivering products and services, and to reach customers all over the globe at a faster pace and lower cost than ever before. Parliament called for a European digital trade strategy and stressed that the EU, as a community of values and the world's biggest exporter of services, should set the standards in international rules and agreements on digital trade flows based on three elements:

- (1) ensuring market access for digital goods and services in third countries,
- (2) ensuring that trade rules create tangible benefits for consumers, and
- (3) ensuring and promoting respect for fundamental rights.

Setting digital trade rules through multilateral and plurilateral trade agreements

The EU (together with other key trade partners) aims to set multilateral rules to govern and to remove frictions from international trade. The Commission also aims to set global digital standards, particularly on data protection. To achieve this goal, the EU plays a central role in the multilateral trading system. An international digital trade framework does not exist, but it is essential not only to protect consumers but also for business, so that companies can operate based on legal certainty across borders, which is an important condition for the expansion of digital trade.

As early as 2013, the EU, together with 22 countries (Australia, Canada, Chile, Chinese Taipei, Colombia, Costa Rica, Hong Kong, Iceland, Israel, Japan, Liechtenstein, Mauritius, Mexico, New Zealand, Norway, Pakistan, Panama, Peru, South Korea, Switzerland, Turkey and the US), launched negotiations on a [Trade in Services Agreement](#) (TiSA) covering about 70 % of the global services economy. The agreement aimed to extend the scope and rules of the General Agreement on Trade in Services (GATS) at the WTO and provided an opportunity for the EU to further strengthen its position as the world's largest exporter of services. The agreement was ambitious in scope and covered, among other things, commitments on information and communication technology (ICT) services (including cross-border data transfers), e-commerce and computer-related services. However, TiSA negotiations have since been halted.

The WTO also acknowledged the rising importance of digital trade (or 'e-commerce', in WTO terminology). The WTO agenda on digital trade dates back to 1998, when WTO members at the Second Ministerial Conference adopted a [Declaration on Global Electronic Commerce](#) recognising the growing significance of global electronic commerce and the opportunities for trade. This declaration resulted in a comprehensive work programme to examine all trade-related issues arising from e-commerce. Ministers also agreed to continue their practice of not imposing customs duties on electronic transmissions, which is known as the 'moratorium on electronic transmissions'. Since then, WTO members have periodically agreed to extend the [moratorium](#) on the imposition of customs duties on electronic transmissions; the last extension was agreed in June 2022 at the WTO's 12th Ministerial Conference. However, [South Africa](#) recently submitted a request at the WTO to end the moratorium, arguing that it provides global tech firms with an unfair tax advantage over local competitors in developing countries.

In December 2017, during the 11th WTO Ministerial Conference in Buenos Aires, a group of [71 WTO members](#) decided to explore the opportunity to negotiate WTO rules on e-commerce. In January 2019, 76 WTO members launched negotiations on trade-related aspects of e-commerce, aiming to establish a global framework that enables digital trade in a non-discriminatory and less trade-restrictive manner. According to the European Commission, there is a [wide range of issues](#) on the table, including trade facilitation, cross-border data flows, consumer protection, the facilitation of electronic transactions (e.g. e-signatures, e-contracts) and the protection of software source code.

The e-commerce negotiations in the WTO aim to:

- facilitate electronic transactions (e.g. e-contracts, e-signatures, e-payments);
- enhance consumer and business trust;
- address barriers related to cross-border data flows and data localisation requirements;
- protect computer source code;
- facilitate online trade in goods (e.g. paperless trade);
- improve regulatory conditions for telecommunications services by updating the WTO Telecommunications Reference Paper;
- improve market access in services sectors and for goods that are key for e-commerce.

Source: [European Commission](#).

After a year of exploratory talks, plurilateral WTO negotiations on e-commerce were officially launched in January 2019. A total of [90 WTO members](#), including EU Member States, are currently engaged in these negotiations. However, negotiations recently received a setback. In October 2023, the [United States Trade Representative](#) (USTR) announced that the US would examine their approaches at the WTO to data and source code, and the impact of trade rules in these areas, in order to provide policy space for US lawmakers to regulate the domestic tech sector. The US had previously tabled [widely supported proposals](#) on the key issues of data flows, data localisation, and source code.

Digital trade chapters in EU free trade agreements

Complementary to the EU's ambition to shape international standards in digital trade via the WTO, the EU has finalised trade agreements with a dedicated digital trade chapter with Canada, Singapore, Vietnam, Japan, the UK, Chile and New Zealand. In addition, the envisaged agreements with Mexico and Mercosur have digital trade chapters. Moreover, the EU is currently negotiating digital trade chapters with Indonesia, Australia, India and the region of eastern and southern Africa (ESA).

The EU aims to ensure predictability and legal certainty for businesses, ensure a secure online environment for consumers and remove unjustified barriers. To achieve this objective, the EU's [core provisions](#) in its digital trade approach in FTAs include:

- no customs duties on electronic transmissions;

- data flows and the prohibition of data localisation requirements;
- consumer protection and protection against unsolicited direct marketing communications;
- provisions regarding the conclusion of contracts by electronic means and e-signatures;
- protection of software source code;
- cooperation and regulatory dialogue.

The EU excludes [audiovisual \(AV\) services](#) from the scope of any liberalisation or regulatory commitment in cross-border trade in services, investment and digital trade, in all its FTAs.

The [EU-CARIFORUM Economic Partnership Agreement \(EPA\)](#), which entered into force in 2008, was the first EU trade agreement to include an e-commerce chapter. The parties recognised that electronic commerce increased trade opportunities in many sectors and agreed to promote the development of electronic commerce between them. The Parties also agreed that the development of electronic commerce had to be fully compatible with the highest international standards of data protection, to ensure the confidence of users of electronic commerce.

The provisions on e-commerce and digital trade in FTAs have increased over time. While the EU-CARIFORUM EPA contains two articles comprising five paragraphs (Article 119 and Article 120), more recent agreements (for instance, the [EU-UK Trade and Cooperation Agreement](#) (EU-UK TCA) that entered into force on 1 May 2021, the [EU-New Zealand Trade Agreement](#) and the [EU-Chile Advanced Framework Agreement](#), for which the negotiations were concluded in June 2022 and December 2022 respectively) provide for a more comprehensive chapter on digital trade rules compared to previous agreements such as the FTAs with the [Republic of Korea](#) and [Singapore](#). These modern digital trade [chapters](#) contain, among other things, detailed provisions on cross-border data flows, the protection of privacy and personal data, customs duties on electronic transmissions, electronic contracts, electronic authentication and trust services, the transfer of or access to source code, online consumer trust, unsolicited direct marketing communications, open government data, and regulatory cooperation on digital trade.

The [EU-New Zealand FTA](#), for example, to which Parliament gave its consent in November 2023, contains a proper digital trade chapter (Chapter 12) comprising a series of provisions and commitments. The agreement would facilitate cross-border data flows by prohibiting 'unjustified' data localisation requirements, while also providing personal data and privacy protections in the EU and New Zealand. It also includes articles on the protection of source code and the use of e-contracts and e-invoicing, and paperless trading. The agreement provides for cooperation between the parties on regulatory matters in the context of digital trade.

The EU has also proposed specific digital trade chapters with similar disciplines in its ongoing negotiations for FTAs with [Australia](#), [India](#) and [Indonesia](#).

However, with a view to current negotiations and future trade agreements, [consumer advocates](#) point out that – while the EU FTA with New Zealand will lead to clearer protections for personal data and safeguards for regulatory oversight of AI – further improvements are necessary for future trade agreements to better protect consumers, notably when they buy online, by making sure that information will be available on where a product comes from, where the trader comes from and how to contact them. This would help to hold algorithmic systems to account.

Bilateral digital trade agreements

The EU has started to further strengthen its digital ties with like-minded partners through bilateral digital trade agreements. The agreements complement existing EU FTAs and the above-mentioned digital partnerships and trade principles with Singapore, the Republic of Korea and Japan. In April 2023, the Council of the EU [authorised](#) the Commission to open negotiations for digital trade principles with Singapore and the Republic of Korea. The Commission [stresses](#) that 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. The [directives](#) for the negotiation of digital trade disciplines with the Republic of Korea and with Singapore cover the following:

- (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).

The Commission explained that an impact assessment has not been carried out since it is particularly difficult to measure the economic impact of the initiative 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.

Moreover, in the margins of the G7 Trade Ministerial in Osaka on 28 October 2023, the EU and Japan concluded a [deal on cross-border data flows](#). The agreed provisions – which will be included as an amendment in the EU-Japan Economic Partnership Agreement (EPA) – lay the foundation for a common approach on digital trade. The Commission stressed that an important element of the deal was the removal of costly data localisation requirements, ensuring companies are not required to physically store their data locally. This would have entailed additional costs and administrative burdens – as businesses might have had to build and maintain data storage facilities in multiple places and duplicate the data they use, with a negative impact on their competitiveness – and could have undermined the security of such data. On 1 December 2023, the European Commission [sent](#) the outcome of the negotiations to the Council to authorise its signature. Once the Council gives its green light, the EU will sign the amendment to the EPA with Japan and then pass it to the European Parliament for consent. Once ratified, the agreed provisions will be included in the EU-Japan EPA.

MAIN REFERENCES

European Commission [staff working document on digital trade negotiations](#) with the Republic of Korea and with Singapore, SWD(2023) 85 final, 2023.

The International Monetary Fund, the Organisation for Economic Co-operation and Development, the United Nations and the World Trade Organization, [Handbook on Measuring Digital Trade](#), Second Edition, 2023.

Fefer R., [EU Digital Policy and International Trade](#), Congressional Research Service, 2021.

Fink M., [Legal Analysis of International Trade Law and Digital Trade](#), Max Planck Institute for Innovation and Competition, 2020.

Köhler-Suzuki N., [Mapping the EU's digital trade](#), 2023.

OECD Global Forum on Trade 2023, [Key issues in Digital Trade](#) – 'Making Digital Trade Work for All', 2023.

Petropoulos G. and Sapir A., [Socio-economic effects of digital trade and artificial intelligence on EU industries including their value chains and EU imports and exports with major trade partners](#), Bruegel, 2020.

Poitiers N. and Görlich D., [In-depth analysis – Geopolitical Aspects of Digital Trade](#), DG EXPO, European Parliament, 2020.

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