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Answer given by Executive Vice-President Dombrovskis
on behalf of the European Commission
(9.4.2021)

The discipline on the protection of software source code is an important tool to fight the rising trend of digital protectionism. It was introduced in response to the practices of certain governments that force foreign businesses to transfer confidential information to the authorities, which in turn might disclose it to local competitors.

In all of the EU's trade agreements, the prohibition to require the access to, or the transfer of software source code is subject to the general, security and prudential exceptions. Taken together, these provisions preserve the right and the policy space to legislate on Artificial Intelligence (AI).

The same discipline on the protection of source code is included in a number of trade agreements[1], which were subject to impact assessments. In addition, the EU already had an authorisation from the Council to negotiate e-commerce in the World Trade Organization (WTO). Therefore, a new impact assessment in this respect was not required.

In this context, the Commission remains committed to ensure that EU trade agreements continue to provide adequate policy space to legislate on AI, including the possibility of transparent and non-discriminatory external audits of AI systems.

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[1] e.g. with Japan or United Kingdom