

## European Union - Republic of Korea Digital Partnership

### Digital Trade Principles

#### Section 1. Preamble

The European Union (EU) and the Republic of Korea (RoK):

*recall their commitments* of the EU-RoK Free Trade Agreement.

*support* the ongoing negotiations under the framework of the Joint Statement Initiative on electronic commerce in the World Trade Organization as a key instrument to advance global rule-setting in digital trade, which should result in common rules for digital trade agreed and upheld at the World Trade Organization, benefiting developing and developed economies alike, and safeguarding each country's right to pursue legitimate regulatory goals.

*are united in their support* for open digital markets and in their opposition to digital protectionism and digital authoritarianism and consider that digital and telecommunications markets should be competitive, transparent, fair, and accessible to international trade and investment.

*recognise* the role of digital trade as a key enabler of sustainable development and its contribution to the green and digital transformation of our economies and therefore consider that digital trade rules should be future-proofed and responsive to innovation and emerging technologies.

*underline* that digital trade should support entrepreneurship and empower a full range of businesses to participate in the global economy, notably women entrepreneurs and micro, small, and medium-sized enterprises.

*emphasise* that digital trade should be used to support jobs, raise living standards, and respond to the needs of workers, innovators, and consumers.

The EU and the RoK share the objectives of ensuring predictability and legal certainty for businesses engaged in cross-border digital trade, fostering an open, free and fair online environment and removing and preventing the emergence of unjustified barriers to digital trade, which have a detrimental impact on trade and investment flows.

The EU and the RoK share the understanding that in order to achieve these objectives, there is a need to cooperate and, where appropriate, coordinate their approaches on addressing digital protectionist measures and trends around the world.

Moreover, the EU and the RoK confirm their common understanding of the following digital trade principles as important means to achieve those objectives.

The EU and the RoK share the understanding that these Digital Trade Principles are not legally binding and are not intended to give rise to any rights or obligations under the respective domestic law and regulation or international law.

## **Section 2. Digital Trade Facilitation**

### **1. Paperless trading**

To cut red tape and enable more businesses to trade, it is essential that governments and industry drive forward the digitisation of trade-related documents and processes, including through means of addressing legal, technical, and commercial barriers to the digitisation of paper processes.

In particular, the transition towards the use of forms and documents required for import, export, or transit of goods in data-based formats is important in order to create a paperless border environment for trade of goods.

The online publication of electronic forms issued or controlled by customs authorities and other government agencies for import, export, or transit of goods is an important element of this.

It is also important that customs authorities and other government agencies increasingly accept such forms and, as appropriate, supporting documents in electronic format, as the legal equivalent of the paper version of those documents.

The use of international standards and cooperation in international fora are important instruments to promote the use of electronic forms and documents required for import, export and transit, and thereby to facilitate trade in goods.

Where governments use digital systems for processing imports, exports, and goods in transit, it is important that such system facilitate the flow of goods along the entirety of the supply chain.

### **2. Single windows**

Single trade windows should be developed to streamline stakeholder interactions with border agencies. They should take into account common standards, with interoperability as a key goal, and in line with the best practice recommendations of the World Customs Organization.

### **3. Electronic Transactions Framework**

Maintaining a legal framework governing electronic transactions that is consistent with the principles of the UNCITRAL Model Law on Electronic Commerce (1996) is indispensable to ensure legal certainty and predictability for businesses and consumers in the online environment.

Domestic law should not put undue regulatory burden on electronic transactions and it is important to facilitate input by interested persons in the development of the relevant legal framework for electronic transactions.

Increasing the acceptance of electronic transferable records, in line with the UNCITRAL Model Law on Electronic Transferable Records (2017), is of key importance to facilitate trade in goods.

### **4. Electronic contracts**

Electronic contracts are the basis and key enabler of any digital transaction. In order to provide businesses and consumers with legal certainty, and except in cases defined in domestic law, the legal effect, legal validity, or enforceability of an electronic contract, should not be denied solely on the basis that the contract has been made by electronic means.

## **5. Electronic authentication and electronic signatures**

Electronic authentication and the use of electronic signatures facilitate digital transactions and make them more secure and efficient.

To enable digital transactions, it is key that electronic signatures are not denied legal effect, legal validity, or admissibility as evidence in legal proceedings solely on the basis that the signature is in electronic form.

It is important to encourage interoperability in digital identities solutions and trust services such as electronic signatures, which facilitates effect for businesses engaged in cross-border transactions and increases the connectivity of the economies.

These principles are equally important for, for example, electronic time stamps, should they exist in domestic law.

## **6. Electronic invoicing**

The use of electronic invoices has a major trade facilitating effect in business-to-business, business-to-consumer and business-to-government transactions.

In order to facilitate cross-border digital trade, domestic measures related to electronic invoices should support cross-border interoperability and, where appropriate, build on existing international frameworks.

Cooperation in sharing best practices and promoting interoperable electronic invoicing frameworks in international fora has an important role to play in this context.

## **7. Electronic transferable records and freight transport information**

Paper-based transactions, which still dominate international trade and transport, are a source of cost, delay, inefficiency, fraud, error and environmental impact. Replacing paper documents with electronic records and information exchanges will therefore generate efficiencies and economic savings.

To that end, it is important to develop appropriate legal frameworks to enable the use of electronic transferable records across borders, as well as the use of digital communication by businesses with authorities to facilitate freight transport, through the digitalisation of administrative procedures, including by supporting technical interoperability.

These legal frameworks should be consistent with the UNCITRAL Model Law on Electronic Transferable Records, and be developed based on the principles of legal clarity, technological neutrality, functional equivalence and non-discrimination, interoperability, global acceptance, transparency and stakeholder engagement.

Dialogue on the design and implementation of the legal frameworks, sharing of best

practices and solutions for the exchange of freight transport information and documents using electronic platforms, and cooperation to support ongoing work in relevant international fora on interoperability and the development of international standards for the use of new technologies in trade processes, will play an important role in this context.

## **8. Customs duties**

The EU and the RoK emphasise the importance and high economic value of their commitment in the EU-RoK Free Trade Agreement that prohibits the imposition of customs duties on electronic transmissions and support a permanent ban on customs duties on electronic transmissions in the World Trade Organization.

## **Section 3. Data Governance**

### **1. Data free flow with trust**

To harness the opportunities of the digital economy and support the trade of goods and services, data should be able to flow freely across borders with trust, including the trust of individuals and businesses stemming from ensuring a high level of data protection and security.

The use of data localisation requirements for protectionist and discriminatory purposes is a serious cause of concern.

It is therefore essential to address unjustified obstacles to cross-border data flows, while preserving our regulatory autonomy in the area of privacy, data protection, the protection of intellectual property rights, security, and preventing third-country authorities from unduly accessing data.

It is indispensable that personal data is protected by high enforceable standards, including when it is transferred across borders, and to strengthen cooperation on data protection, including enforcement cooperation between supervisory authorities.

It is important to enhance cooperation on data governance, privacy and data protection and foster regulatory convergence. The EU and the RoK will cooperate to explore commonalities in their regulatory approaches and promote regulatory convergence with a view to fostering future interoperability.

Non-personal data should benefit from protection applicable under domestic law, such as intellectual property or the protection of trade secrets, including when it is transferred across borders.

Achieving consensus on common principles for trusted government access to personal data held by the private sector will help to provide transparency and legal certainty. It will support the transfer of data between jurisdictions by commercial entities and result in positive economic and social impacts. The EU and the RoK support the OECD's work on developing these principles, recognising the importance of proportionate access for legitimate public policy objectives, including for criminal law enforcement purposes and to safeguard national security.

## **2. Open government data**

Open government data can play an important role in digital trade and in fostering economic and social development, competitiveness, and innovation. Therefore, there is value in expanding the coverage of open government data, taking into account the views of interested stakeholders. There are clear benefits to making data, the disclosure of which is not restricted under domestic law, which is held by any level of the government, digitally available for public access and use.

Where appropriate, government data should be made publicly available in an anonymised, open, interoperable and machine-readable format. The reproduction, redistribution, republishing, regrouping or the use the data for commercial and noncommercial purposes should be facilitated.

Exchanging information and experiences on practices and policies has an important role to play in encouraging the development of digital trade and creating business opportunities, especially for small and medium-sized enterprises.

## **Section 4. Consumer trust**

### **1. Online consumer protection**

Effective measures are needed to ensure a high level of consumer protection when purchasing goods and services online.

In order to enhance consumer confidence and trust in digital trade, it is necessary to ensure that domestic law proscribes misleading, fraudulent and deceptive commercial activities that cause harm, or potential harm, to consumers engaged in digital transactions.

To protect consumers in the online environment, it is important to require that suppliers of goods and services deal fairly and honestly with consumers, that they provide complete, accurate, and transparent information on goods and services, including any terms and conditions of purchase; and that they ensure the safety of goods and, where applicable, services, during normal or reasonably foreseeable use. Consumers should be provided with meaningful access to fair, transparent and effective mechanisms to resolve disputes with suppliers of goods and services related to digital transactions and obtain redress, as appropriate.

Overall, the level of protection of consumers who are engaged in digital transactions should not be less than that is afforded to consumers who are engaged in other forms of commerce.

In the case of cross-border transactions, cooperation between consumer protection agencies, including through the exchange of information and experience, is paramount for the protection of consumers in the online environment. Similarly cooperation between national authorities, customs, consumer protection agencies and other relevant entities is important to protect consumers in the online environment and combat the sale of illegal, non-compliant or counterfeit products.

## **2. Unsolicited commercial electronic messages**

Transparent and effective measures that limit unsolicited commercial electronic messages have an important role to play in promoting confidence and trust in electronic commerce.

Accordingly, it is necessary to ensure that senders of commercial electronic messages either obtain the consent of recipients to receive commercial electronic messages or facilitate the ability of recipients to prevent ongoing reception of those messages.

In order to protect the recipients, commercial electronic messages should be clearly identifiable as such, clearly disclose on whose behalf they are sent, and contain the necessary information to enable recipients to request cessation free of charge and at any time.

The recipients should have the right to redress against suppliers of unsolicited commercial electronic messages.

## **3. Safety online**

A safe and contestable online environment supports the digital economy by protecting users from illegal or harmful content and creating a sphere where businesses, innovation and creativity can thrive.

Multilateral cooperation among governments (including in international fora) as well as working with technology service providers and users is key to address online harms.

## **Section 5. Business trust**

### **1. Open internet access**

As the bedrock of a thriving and innovative digital economy, the internet must be open, free, and secure.

End-users greatly benefit from open internet access policies ensuring equal treatment of traffic, which allow them to access and distribute information and content and use and provide lawful services and applications of their choice, subject to reasonable network management, that is transparent, proportionate and does not discriminate between traffic of the same category.

End-users should also be allowed to connect the devices of their choice to the Internet, provided that such devices do not harm the network.

### **2. Cybersecurity**

Businesses need a secure digital trading environment, with the highest standards of cybersecurity and resilience against illicit or malign activity.

Cybersecurity incidents and threats undermine confidence in digital trade and have a detrimental effect on trust in the online environment.

In order to prevent or mitigate those incidents and threats and thereby facilitate digital trade, it is important to build domestic capabilities for cybersecurity incident response and to promote information exchange and cooperation.

### **3. Source code**

To ensure that consumers and businesses can benefit from digital innovation, effective and balanced intellectual property frameworks should be maintained, with protections for trade secrets.

Businesses should not be required or coerced to transfer technology, in particular to transfer or provide access to source code as a condition for the import, distribution, sale, or use of that software, or of products containing that software.

At the same time, public authorities should retain sufficient flexibility to obtain the transfer of or access to source code, when pursuing legitimate regulatory goals, subject to safeguards against unauthorised disclosure.

### **4. ICT products that use cryptography**

Encryption technologies have an important role in supporting digital trade by protecting confidentiality and security of data.

As a condition of the manufacture, sale, distribution, import or use of an ICT product, businesses should not be required or coerced to provide access to encryption keys, create joint ventures with local businesses, or use a particular cryptographic algorithm.

At the same time, public authorities should retain sufficient flexibility to request the manufacturer or supplier of an ICT product to transfer or provide access to any information that is necessary to pursue in a proportionate way legitimate regulatory goals, subject to safeguards against unauthorised disclosure. Moreover, it is indispensable to promote cooperation between law enforcement authorities and service suppliers for the purposes of their lawful and proportionate enforcement activities that must respect human rights, in particular the privacy of communications.

## **Section 6. Cooperation on protectionist measures in the digital sphere**

The EU and the RoK share the understanding that it is important to build an environment of trust in the digital economy.

The EU and the RoK share the assessment that an increasing number of domestic measures in third countries unjustifiably restrict digital trade. These measures do not only affect individual rights, but they also create major obstacles to companies, especially SMEs, engaged in digital trade. They increase costs and may force companies to change their business models or stop their commercial activities.

The EU and the RoK therefore support the development of a coordinated approach towards such measures. To facilitate this coordination, they share the understanding for the need to establish a single point of contact in their respective authorities.

The EU and the RoK recognise that the fast evolving nature of digital technologies and digital trade may require that these digital trade principles are adapted in future. The Ministry of Trade, Industry and Energy of Republic of Korea (MOTIE) and the Directorate General for Trade of the European Commission (DG TRADE) affirm their commitment to cooperation on matters relating to digital trade and, building on these principles, to explore the deepening of their bilateral relations with respect to digital trade, including on digital trade rules.

Signed in duplicate in Brussels on 30 November 2022 in the English language.

Valdis Dombrovskis  
Executive Vice-President  
European Commission

Dukgeun Ahn  
Minister for Trade  
Ministry of Trade, Industry and Energy