

Disclaimer: *In view of the Commission and New Zealand's respective transparency policies, the Commission and New Zealand are publishing the texts of the Agreement following the announcement of conclusion of the negotiations on 30 June 2022 (Brussels time).*

The texts are published in view of the public interest in the negotiations for information purposes only and they may undergo further modifications, including as a result of the process of legal revision. These texts are without prejudice to the final outcome of the Agreement between the EU and New Zealand.

The texts will be final upon signature. The Agreement will become binding on the Parties under international law only after completion by each Party of its internal legal procedures necessary for the entry into force of the Agreement.

CHAPTER XX

DIGITAL TRADE

SECTION A

GENERAL PROVISIONS

ARTICLE X.1

Scope

1. This Chapter applies to measures of a Party affecting trade enabled by electronic means.
2. This Chapter does not apply to:
 - (a) audio-visual services; and
 - (b) information held or processed by or on behalf of a Party, or measures relating to such information, including measures related to its collection.
3. This Chapter shall not apply to measures adopted or maintained by New Zealand that it deems necessary to protect or promote Māori rights, interests, duties and responsibilities¹ in respect

¹ For greater certainty, Māori rights, interests, duties and responsibilities includes those relating to mātauranga Māori

of matters covered by this Chapter, including in fulfilment of New Zealand's obligations under Te Tiriti o Waitangi/the Treaty of Waitangi, provided that such measures are not used as a means of arbitrary or unjustified discrimination against persons of the other Party or a disguised restriction on trade enabled by electronic means. The Parties agree that the interpretation of the Te Tiriti o Waitangi/the Treaty of Waitangi, including as to the nature of the rights and obligations arising under it, shall not be subject to the dispute settlement provisions of this Agreement.

ARTICLE X.2

Right to regulate

The Parties reaffirm the right to regulate within their territories to achieve legitimate policy objectives, such as the protection of human, animal or plant life or health, social services, public education, safety, the environment including climate change, public morals, social or consumer protection, animal welfare, privacy and data protection, the promotion and protection of cultural diversity, and in the case of New Zealand the promotion or protection of the rights, duties, interests and responsibilities of Maori.

Drafters' note : Subject to final drafting in the preamble and also to be reflected in Services and Investment chapters.

ARTICLE X.3

Definitions

1. The definitions included in Article 1.2 of the Chapter on Investment Liberalisation and Trade in Services apply to this Chapter.
2. The definition of 'public telecommunications service' in Article 5.12(j) of the Telecommunications Section applies to this Chapter.

3. For the purpose of this Chapter:

- (a) 'consumer' means any natural person using a public telecommunications service for other than professional purposes;
- (b) 'digital procurement' means procurement through electronic means.
- (c) 'direct marketing communication' means any form of commercial advertising by which a natural or juridical person communicates marketing messages directly to a user via a public telecommunications service and, for the purpose of this Agreement, covers at least electronic mail and text and multimedia messages (SMS and MMS);
- (d) 'electronic authentication' means an electronic process or act of verifying that enables the confirmation of:
 - (i) the electronic identification of a natural or juridical person, or
 - (ii) the origin and integrity of data in electronic form;
- (e) 'electronic invoicing' or 'e-invoicing' means the automated creation, exchange and processing of invoices between suppliers and buyers using a structured digital format;
- (f) 'electronic seal' means data in electronic form used by a juridical person which is attached to or logically associated with other data in electronic form to ensure the latter's origin and integrity;
- (g) 'electronic signature' means data in electronic form which is attached to or logically associated with other data in electronic form that:
 - (i) may be used to identify the signatory in relation to the data in electronic form;

- (ii) used by a signatory to agree on the data in electronic form to which it relates²; and
- (h) “internet access service” means a public telecommunications service that provides access to the internet, and thereby connectivity to virtually all end points of the internet, irrespective of the network technology and terminal equipment used;
- (i) ‘trade administration document’ means a form issued or controlled by a Party that must be completed by or for an importer or exporter in connection with the import or export of goods;
- (j) ‘user’ means any natural or juridical person using a public telecommunications service.

SECTION B

DATA FLOWS AND PERSONAL DATA PROTECTION

ARTICLE X.4

Cross-border data flows

1. The Parties are committed to ensuring cross-border data flows to facilitate trade in the digital economy and recognise that each Party may have its own regulatory requirements in this regard.
2. To that end, cross-border data flows carried out in the context of activity that is within the scope of this chapter shall not be restricted between the Parties by:
 - (a) requiring the use of computing facilities or network elements in the Party's territory for processing, including by imposing the use of computing facilities or network elements that are certified or approved in the territory of the Party;

² For greater certainty, nothing in this provision prevents a Party from according greater legal effect to an electronic signature that satisfies certain requirements, such as indicating that the [electronic] data [message] has not been altered or verifying the identity of the signatory.

- (b) requiring the localisation of data in the Party's territory for storage or processing;
- (c) prohibiting storage or processing in the territory of the other Party;
- (d) making the cross-border transfer of data contingent upon use of computing facilities or network elements in the Party's territory or upon localisation requirements in the Party's territory.

3. For greater certainty, the Parties understand that nothing in this Article prevents Parties from adopting or maintaining measures in accordance with Article X.1 (General Exceptions) to achieve the public policy objectives referred to therein, which, for the purpose of this Article, shall be interpreted, where relevant, in a manner that takes into account the evolutionary nature of the digital technologies. The preceding sentence does not affect the application of other exceptions in this Agreement to this Article.

4. The Parties shall keep the implementation of this provision under review and assess its functioning within 3 years of the entry into force of this Agreement unless the Parties otherwise agree. A Party may also at any time propose to the other Party to review this article. Such request shall be accorded sympathetic consideration.

5. In the context of that review, and following the release of the Waitangi Tribunal's Report Wai 2522 dated 19 November 2021, New Zealand:

- (a) reaffirms its continued ability to support and promote Māori interests under this Agreement;
and
- (b) affirms its intention to engage Māori to ensure the review outlined in paragraph 4 takes account of the continued need for New Zealand to support Māori to exercise their rights and interests, and meet its responsibilities under Te Tiriti o Waitangi/the Treaty of Waitangi and its principles.

ARTICLE X.5

Protection of personal data and privacy

1. Each Party recognises that the protection of personal data and privacy is a fundamental right and that high standards in this regard contribute to enhancing consumer confidence and trust in the digital trade.
2. Each Party may adopt and maintain the measures it deems appropriate to ensure the protection of personal data and privacy, including through the adoption and application of rules for the cross-border transfer of personal data. Nothing in this agreement shall affect the protection of personal data and privacy afforded by the Parties' respective measures.
3. Each Party shall inform the other Party about any measures it adopts or maintains according to paragraph 2.
4. Each Party shall publish information on the protection of personal data and privacy that it provides to users of digital trade, including on:
 - (a) how individuals can pursue a remedy; and
 - (b) guidance and other information regarding compliance of businesses with applicable legal requirements.
5. For the purposes of this agreement, 'personal data' means any information relating to an identified or identifiable natural person.

SECTION C

SPECIFIC PROVISIONS

ARTICLE X.6

Customs duties on electronic transmissions

1. A Party shall not impose customs duties on electronic transmissions between a [natural or juridical person] of one Party and a [natural or juridical person] of the other Party.
2. For greater certainty, paragraph 1 shall not preclude a Party from imposing internal taxes, fees or other charges on electronic transmissions, provided that such taxes, fees or charges are imposed in a manner consistent with this Agreement.

ARTICLE X.7

No prior authorisation

1. The Parties [will/shall] endeavour not to impose prior authorisation or any other requirement having equivalent effect on the provision of services by electronic means.
2. Paragraph 1 shall be without prejudice to authorisation schemes which are not specifically and exclusively targeted at services provided by electronic means, and to rules in the field of telecommunications.

ARTICLE X.8

Conclusion of contracts by electronic means

Unless otherwise provided for under its laws and regulations, each Party shall ensure that:

- (a) contracts may be concluded by electronic means;
- (b) contracts are not deprived of legal effect, validity or enforceability solely on the ground that the contract has been made by electronic means; and

- (c) no other obstacles are maintained or created to the use of electronic contracts.

ARTICLE X.9

Electronic authentication

1. Except in circumstances otherwise provided for under its laws and regulation, a Party shall not deny the legal effect and admissibility as evidence in legal proceedings of an electronic document, an electronic signature, an electronic seal, or the authenticating data resulting from electronic authentication, solely on the ground that it is in electronic form.
2. A Party shall not adopt or maintain measures that would:
 - (a) prohibit parties to an electronic transaction from mutually determining the appropriate electronic authentication methods for their transaction; or
 - (b) prevent parties to an electronic transaction from being able to prove to judicial and administrative authorities that the use of electronic authentication in that transaction complies with the applicable legal requirements.
3. Notwithstanding paragraph 2, a Party may require that for a particular category of transactions, the method of electronic authentication is certified by an authority accredited in accordance with its law or meets certain performance standards which shall be objective, transparent and non-discriminatory and shall only relate to the specific characteristics of the category of transactions concerned.
4. To the extent provided for under its laws or regulations, a Party shall apply paragraphs 1 to 3 to other electronic processes or means of facilitating or enabling electronic transactions, such as electronic time stamps or electronic registered delivery services.

Article X.10

Electronic Invoicing

1. The Parties recognise the importance of e-invoicing standards as a key element of digital procurement systems to support interoperability and digital trade and that these systems can also be used for business-to-business and business-to-consumer digital transactions.
2. Each Party shall ensure that the implementation of measures related to e-invoicing in its jurisdiction is designed to support cross-border interoperability. When developing measures related to e-invoicing, each Party shall take into account, as appropriate, international frameworks, guidelines or recommendations, where they exist.
3. The Parties shall endeavour to share best practices pertaining to e-invoicing, and digital procurement systems.

Article X.11

Transfer of or access to source code

1. The Parties recognise the increasing social and economic importance of the use of digital technologies, and the importance of the safe and responsible development and use of such technology including in respect of source code to foster public trust.
2. A Party shall not require the transfer of, or access to, the source code of software owned by a natural or juridical person of the other Party as a condition for the import, export, distribution, sale or use of such software, or of products containing such software, in or from its territory.³
3. For greater certainty:

³ This article does not preclude a Party from requiring that access be provided to software used for critical infrastructure, to the extent required to ensure the effective functioning of such critical infrastructure, subject to safeguards against unauthorised disclosure.

- (a) paragraph 2 does not apply to the voluntary transfer of or granting of access to source code on a commercial basis by a natural or juridical person of the other Party, for instance in the context of a public procurement transaction or a freely negotiated contract; and
- (b) paragraph 2 shall not affect the right of a Party's regulatory, administrative, law enforcement or judicial bodies to require the modification of source code of software to comply with its laws and regulations which are not inconsistent with this Agreement.

4. Nothing in this Article shall:

- (a) affect the right of a Party's regulatory authorities, law enforcement, judicial or conformity assessment bodies to access source code of software, either prior to or following import, export, distribution, sale or use, for investigation, inspection or examination, enforcement action or judicial proceeding purposes to determine compliance with its laws and regulations, including those relating to non-discrimination and the prevention of bias, subject to safeguards against unauthorised disclosure;
- (b) affect requirements by a competition authority, or other relevant body of a Party to remedy a violation of competition law;
- (c) affect the protection and enforcement of intellectual property rights;
- (d) affect the right of a Party to take measures in accordance with Article X.1.2(a) [Incorporation and Application of Certain Provisions of the GPA] of Chapter X [Public Procurement], by which Article III (Security and General Exceptions) of the GPA is incorporated into and made part of this Agreement, *mutatis mutandis*.

ARTICLE X.12

Online consumer trust

1. Recognising the importance of enhancing consumer trust in digital trade, each Party shall adopt or maintain measures to ensure the effective protection of consumers engaging in electronic commerce transactions, including but not limited to measures that:
 - (a) proscribe fraudulent and deceptive commercial practices, including misleading commercial practices;
 - (b) require suppliers of goods and services to act in good faith and abide by fair commercial practices, including by respecting consumers' rights [regarding/relating to] unsolicited goods and services;
 - (c) grant consumers access to redress to claim their rights, including a right to remedies in cases where goods or services are paid and not delivered or provided as agreed.
2. Each Party shall provide a level of protection for consumers engaging in electronic commerce transactions, that is at least equivalent to that provided for consumers of commerce conducted by non-electronic means under its respective laws, regulations and policies.
3. The Parties recognise the importance of entrusting their consumer protection agencies or other relevant bodies with adequate enforcement powers and the importance of cooperation between their agencies in order to protect consumers and enhance online consumer trust.
4. The Parties recognise the benefits of mechanisms to facilitate the resolution of claims over cross-border electronic commerce transactions. To this end, the Parties shall explore options to make such mechanisms available for cross-border electronic commerce transactions between the Parties.

ARTICLE X.13

Unsolicited direct marketing communications

1. Each Party shall adopt or maintain measures to ensure the effective protection of users against unsolicited direct marketing communications.

2. Each Party shall ensure that direct marketing communications are not sent to users who are natural persons unless they have given their consent to receiving such communications.⁴
3. Notwithstanding paragraph 2, each Party shall allow those natural or juridical persons who have collected, in accordance with its law, the contact details of a user in the context of the supply of goods or services, to send direct marketing communications to that user for their own similar goods or services.
4. Each Party shall ensure that direct marketing communications are clearly identifiable as such, clearly disclose on whose behalf they are made and contain the necessary information to enable users to request cessation free of charge and at any moment.
5. Each Party shall provide users with access to redress against suppliers of direct marketing communications that do not comply with the measures adopted or maintained pursuant to paragraphs 1 to 4.

Article X.14

Cooperation on regulatory issues with regard to digital trade

1. The Parties shall exchange information on regulatory matters in the context of digital trade, which shall address the following:
 - (a) the recognition and facilitation of interoperable electronic trust and authentication services;
 - (b) the treatment of direct marketing communications;
 - (c) the protection of consumers online, including means for consumer redress and building consumer confidence;

⁴ Consent shall be defined in accordance with each Party's laws.

- (d) the challenges for small and medium enterprises in the use of electronic commerce;
- (e) e-government; and
- (f) other matters relevant for the development of digital trade.

2. For greater certainty, this provision shall not apply to a Party's rules and safeguards for the protection of personal data and privacy, including on cross-border transfers of personal data.

3. The Parties shall, where appropriate, cooperate and participate actively in international fora to promote the development of digital trade.

4. The Parties recognise the importance of cooperating on cybersecurity matters relevant for digital trade.

ARTICLE X.15

Paperless Trading

1. With a view to creating a paperless border environment for trade of goods, each Party/Member recognises the importance of eliminating paper forms and documents required for import, export, or transit of goods. To this end, Parties/Members are encouraged to eliminate paper forms and documents, as appropriate, and transition toward using forms and documents in data-based formats.

For the purpose of paragraphs 2 and 3, 'electronic format' includes, inter alia, formats suitable for automated interpretation and electronic processing without human intervention, as well as digitised images and forms.

2. Each Party shall endeavour to make trade administration documents that it issues or controls, or which are required in the normal course of trade, available to the public in electronic format.

3. Each Party shall endeavour to accept the electronic versions of trade administration documents as the legal equivalent of paper documents.
4. The Parties shall endeavour to cooperate bilaterally and in international forums to enhance acceptance of electronic versions of trade administration documents.
5. In developing initiatives which provide for the use of paperless trading, each Party shall endeavour to take into account the methods agreed by international organisations.

ARTICLE X.16

Open Internet Access

The Parties recognise the benefits of users in their territory, subject to applicable policies, laws and regulations, being able to:

- (a) access, distribute and use services and applications of their choice available on the Internet, subject to reasonable network management which does not block or slow down traffic based on commercial reasons;
- (b) connect devices of their choice to the Internet, provided that such devices do not harm the network; and
- (c) have access to information on the network management practices of their Internet access service supplier.