

New Zealand and EU approaches to electronic commerce

We seek a broad, high quality electronic commerce chapter with the EU that will allow businesses and consumers to transact online with confidence, allow businesses to freely transfer data in the course of business, and protect the privacy and rights of consumers.

Digital trade and cross-border electronic commerce (e-commerce) are areas of growing prominence, both domestically and internationally. For New Zealand, the role digital technologies and services can play in helping overcome perennial economic challenges of small scale, distance from major markets and need for sources of capital is crucial. The ability to move data between jurisdictions is increasingly crucial to businesses involved in international trade and is an inevitable feature of the modern economy.

The volume of international trade in goods and services that is occurring via e-commerce continues to grow exponentially. Recent research by McKinsey estimated that cross-border data flows (used as a proxy for digital trade) grew by 45 times between 2004 and 2014 and generated \$2.8 trillion in global economic revenue in 2014 alone.

The big regulatory change currently affecting the digital economy is the EU's General Data Protection Regulation (GDPR), which took effect on 25 May 2018. The goal of GDPR is to harmonise data protection laws across the EU and protect the privacy of EU citizens from data breaches. However, the GDPR applies to all companies holding or processing data of EU citizens, not just those based in the EU, so it is affecting New Zealand companies as well.

Key obligations

Our existing electronic commerce chapters have been based on core obligations that allow businesses and consumers to connect and transact online with freedom and confidence.

These provisions include:

- World Trade Organization customs duties moratorium: ensuring that parties will not impose customs duties on electronic transactions; domestic taxes, including GST, can still be imposed. The moratorium is an established part of e-commerce trade rules and was first established at the WTO in 1998.
- Electronic authentication: ensuring that the underlying structure is in place to allow online transactions. This includes e-signatures that allow online contracts to be legally binding in most circumstances (in New Zealand, several specific transactions, including land transactions, do not allow e-signatures).
- Domestic regulatory framework: requiring that countries establish a domestic framework that governs electronic transactions that is consistent with one of the internationally developed model frameworks.
- Spam minimisation: encouraging parties to work together to minimise spam emails for consumers, and to ensure consumers have the option to opt out of receiving these emails.

- Consumer protection: ensuring that when New Zealand consumers are dealing with overseas companies, consumer law will apply to this transaction, since for online transactions, New Zealand consumer protection law is not always enforceable.

Due to the growing importance of data transfers for business, we also look to include provisions allowing for cross-border data flows, except in situations where there are legitimate public policy reasons not to allow the data transfer e.g. private health data.

New Zealand also pursues robust privacy protections to ensure that businesses or citizens can transfer information to other jurisdictions confident that it will receive a sufficient level of protection. Both New Zealand and the EU have strong and robust privacy regimes by international standards. New Zealand is well placed to engage with the EU on this as the New Zealand Privacy Regime has a privacy adequacy ruling from the EU, indicating that New Zealand's privacy regime offers equivalent protection to the EU's privacy regime.