



Negotiations on a Deep and Comprehensive Free Trade Agreement (DCFTA) between the European Union and Tunisia

EU Proposal for a Digital Trade Title

EXPLANATORY NOTE

January 2019

The Digital Trade chapter proposed by the EU for an EU-Tunisia Deep and Comprehensive Free Trade Agreement (DCFTA) outlines horizontal rules that apply to any trade done by electronic means. The text of the EU proposal was sent in advance and presented to the Tunisian Government experts at the 3rd negotiating round.

Objectives

The Title has three main objectives:

- to remove unjustified barriers,
- to bring legal certainty for companies
- to ensure secure online environment for consumers.

Main Elements

The Title contains the following specific provisions:

- no customs duties on electronic transmissions - it bans imposing customs duties on electronic transmissions. It is a rule based on the WTO moratorium on customs duties on electronic transmissions;
- principle of no prior authorisation, which bans authorisation procedures that

specifically target online services for protectionist reasons;

- conclusion of contracts by electronic means which confirms the legal validity and effect of electronic contracts;
- electronic authentication and electronic trust services - it confirms the validity of these electronic services as evidence in legal proceedings, and it establishes that there should be no barriers for companies to determine the methods of their transaction or to prove that they comply with requirements with respect to these services;
- prohibition of mandatory source code - contains a general prohibition for Parties to ask for transfer of a source code of software, subject to some exceptions;
- online consumer trust - the aim is to have transparent and effective consumer protection rules in an online environment to build consumer confidence; as well as cooperation between the respective competent authorities in charge of consumer protection;
- Unsolicited commercial electronic messages - so called "spam". It clarifies that the consumers must be able to opt-out from spam if they wish so, they must give their consent to receive such messages, spam must be clearly

identifiable and finally, there must be a mechanism in place to act against companies that they do not comply with these rules;

- cooperation of on regulatory issues – its objective is to maintain a dialogue on regulatory issues of digital trade, to share information and experience, including on related laws, regulations and their implementation, and best practices in this area.

Cross-border data flows and protection of personal data and privacy

The EU has proposed that provisions on Cross-border data flows and protection of personal data and privacy would be integrated in the Digital Trade Title as Chapter 2.

Objectives

These provisions will provide for a straightforward prohibition of protectionist barriers to cross-border data flows, in full compliance with and without prejudice to the EU's data protection and privacy rules. The protection of personal data is a fundamental right under Article 8 of the EU Charter of Fundamental rights and is not negotiable.

Main Elements

This text of this Chapter contains two provisions:

- "Cross-border data flows" is a horizontal clause covering all sectors of the economy and covering both personal data and non-personal data. In order to facilitate cross-border data flows between parties of trade agreements, it addresses the following restrictions:
 - the requirement to use computing facilities in a party's territory including by imposing certification requirements for such facilities;
 - the forced localisation of data in a party's territory;
 - the prohibition of storing and processing data in the other party's territory; and
 - other restrictions making cross-border transfers dependent on the use of

computing facilities in the party's territory.

It also includes a review clause on the list of prohibited restrictions and a requirement to assess its functioning within three years.

- "Protection of personal data and privacy" will fully safeguard the parties' right to regulate in the field of personal data protection, given its character as a universal human right. It includes the following elements:
 - an explicit recognition that high standards and rules on privacy and personal data protection are fundamental for the parties to the Agreement;
 - a clause allowing the parties to adopt and maintain safeguards for privacy and personal data protection, including on cross-border transfers of personal data, which applies to the whole agreement;
 - a provision stipulating that the agreement does not affect the protection of personal data and privacy as guaranteed by the parties' laws;
 - an obligation of transparency to ensure that Parties are informed of possible future safeguards for privacy and personal data protection; and
 - a definition of personal data.
- There is also a clarification that these two articles will not be subject to the Investment Court System, which is being negotiated separately.
- Moreover, an additional paragraph was introduced in the Article on cooperation on regulatory issues with regard to digital trade. It clarifies that privacy and personal data issues will not be included in the regulatory dialogues that can be held under the Agreement.