EUROPEAN
COMMISSION

Brussels, 10.9.2025
COM(2025) 478 final

2025/0272 (NLE)

Proposal for a

COUNCIL DECISION

on the signing, on behalf of the Union, of the Digital Trade Agreement between the European Union and the Republic of Korea

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

The Council authorised the opening of negotiations for digital trade disciplines with the Republic of Korea ('Korea') on 27 June 2023.[1] The Commission, on behalf of the Union, and Korea launched the negotiations on 31 October 2023.[2] The negotiations were concluded in principle on 10 March 2025.[3]

The outcome of the negotiations constitutes a modern, self-standing Digital Trade Agreement between the European Union ('EU') and Korea ('EU-Korea Digital Trade Agreement'), with ambitious and binding commitments on digital trade. The EU-Korea Digital Trade Agreement will enhance consumer protection online, provide legal certainty for businesses that want to engage in cross-border digital trade, and address unjustified barriers to digital trade. It will complement the existing EU-Korea Free Trade Agreement[4] (FTA) by deepening and underpinning the existing bilateral trade relationship between the EU and Korea from the digital perspective.

Digital trade accounts for around 25% of all international trade and has been growing at a faster pace than traditional trade.[5] The EU is the world's leader in both exports and imports of digitally deliverable services, which amounted to EUR 1.3 trillion in 2022, or 54% of the EU's total trade in services.

The EU-Korea Digital Trade Agreement will enter into force once the EU and Korea have completed their respective requirements and procedures for signature and conclusion and have exchanged written notifications thereon.

• Consistency with existing policy provisions in the policy area

This proposal is consistent with the EU trade policy review of 2021[6] that recognised the contribution of the EU's digital trade policy to the EU's digital transformation and announced the EU's intention to step up bilateral engagement and explore stronger frameworks for cooperation on trade-related digital issues with like-minded partners. It is also consistent with the objective of the 2023 EU economic security strategy to pursue partnerships with likeminded countries. The EU-Korea Digital Trade Agreement constitutes a modern, self-standing agreement with ambitious and binding commitments on digital trade between the EU and Korea.

The proposal builds on the EU-Korea Framework Agreement[7] and the FTA, which already liberalised and enhanced bilateral trade relations between the EU and Korea. The EU-Korea Digital Trade Agreement gives effect to the trade provisions of the EU-Korea Framework Agreement and, together with the FTA, forms the free trade area between the EU and Korea.

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1 Council Decision 8886/23.
2 https://policy.trade.ec.europa.eu/news/joint-statement-launch-negotiations-eu-korea-digital-trade-agreement-2023-10-31_en.
3 https://ec.europa.eu/commission/presscorner/detail/en/ip_25_732.
4 OJ L 127, 14.5.2011.
5 OECD, 'Of bytes and trade: Quantifying the impact of digitalisation on trade', May 2023.
6 COM(2021) 66 final.
7 OJ L 20, 23.1.2013.

The proposal is consistent with the EU strategy for cooperation in the Indo-Pacific[8] that recognised that the region is at the forefront of the digital economy and proposed establishing Digital Partnerships with key partners in the region, including with Korea.

The EU-Korea Digital Trade Agreement builds on the EU-Korea Digital Trade Principles, a key deliverable of the EU-Korea Digital Partnership[9]. The EU-Korea Digital Trade Agreement recognises the EU-Korea Digital Partnership as the key forum for regulatory cooperation on digital policies.

The EU-Korea Digital Trade Agreement is also consistent with the outcome of the Joint Statement Initiative on Electronic Commerce[10], which is the result of plurilateral negotiations amongst more than 90 Members of the World Trade Organisation.

- **Consistency with other Union policies**

The proposal is in line with EU internal market legislation in the area of the digital and data economy. The proposal also ensures full respect of the fundamental rights for the protection of personal data and privacy and the EU regulatory framework in this area. The EU-Korea Digital Trade Agreement affirms the right to regulate and ensures sufficient regulatory space to pursue public policy objectives in these areas.

The proposal focuses on digital matters by providing a framework for open digital trade and legal certainty between the Parties. The proposal, however, does not introduce new or substantially modified digital requirements and does not entail new data exchanges, automation, digital systems, or public service delivery. The implementation of the proposal does not require new or modification to the existing EU acquis. Therefore, 'digital by default' principle does not apply.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The substantive legal basis is Article 207 TFEU.

The EU-Korea Digital Trade Agreement is to be signed by the Union pursuant to a decision of the Council based on Article 218(5) TFEU and concluded by the Union pursuant to a decision of the Council based on Article 218(6), following the consent of the European Parliament.

- **Subsidiarity (for non-exclusive competence)**

Not applicable.

- **Proportionality**

Trade agreements are the appropriate means to govern market access and the related areas of comprehensive economic relations with a third country outside the EU. No alternative exists to render such commitments and liberalisation efforts legally binding.

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8 JOIN(2021) 24 final.

9 https://digital-strategy.ec.europa.eu/en/news/eu-and-republic-korea-digital-partnership-strengthening-our-economic-resilience.

10 Statement by the co-convenors of the Joint Statement Initiative on Electronic Commerce of 26 July 2024 (INF/ECOM/87).

- **Choice of the instrument**

This proposal is in accordance with Article 218(5) TFEU, which envisages the adoption by the Council of decisions on the signature of international agreements. No other legal instrument exists that could be used in order to achieve the objective expressed in this proposal.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

The bilateral trade relations between the EU and Korea have already been liberalised and enhanced by the FTA between the EU and Korea, provisionally applied since July 2011 and formally ratified in December 2015. Although this is a comprehensive FTA that provides for substantial commitments for trade in goods and services between the parties, it does not provide for comprehensive rules on digital trade.

- **Stakeholder consultations**

Stakeholders have been consulted in the context of a study on the potential impacts of an EU-Korea Digital Trade Agreement, conducted by an external contractor, in support of the negotiations.[11]

Prior to, and during the negotiations, the EU Member States were regularly informed and consulted orally and in writing on the different aspects of the negotiation via the Council's Trade Policy Committee. The European Parliament was also kept informed and consulted via its Committee on International Trade ('INTA'), and notably its Monitoring Group for Korea.

Furthermore, during the negotiations, the Commission has published on its website reports of the negotiating rounds, the EU text proposals and press releases, as well as the text of the agreement after the conclusion of the negotiations in principle.

- **Collection and use of expertise**

The study on the potential impacts of an EU-Korea Digital Trade Agreement was conducted by an external contractor.[12]

- **Impact assessment**

The study on the potential impacts of an EU-Korea Digital Trade Agreement, conducted in support of the negotiations for the EU-Korea Digital Trade Agreement, confirmed the potential positive impact of the agreement.[13] The study was used to examine relevant aspects of Korea's digital economy as well as the EU's and Korea's respective practices on digital trade, taking into account stakeholder's views.

- **Regulatory fitness and simplification**

Not applicable.

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11 https://www.eeas.europa.eu/delegations/south-korea/study-potential-impact-future-eu-rok-digital-trade-agreement_en?s=179.

12 Ibid.

13 Ibid.

- **Fundamental rights**

The proposal is fully compatible with the Charter of Fundamental rights. The EU-Korea Digital Trade Agreement fully preserves the regulatory space to protect fundamental rights, including the fundamental rights to personal data protection and privacy.

4. BUDGETARY IMPLICATIONS

Not applicable.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The EU-Korea Digital Trade Agreement makes applicable, by cross-reference, the institutional provisions of the FTA, which provide a structure for the relevant implementing bodies of the FTA to monitor the implementation, operation and impact of the EU-Korea Digital Trade Agreement.

The EU-Korea Digital Trade Agreement also includes dedicated provisions on stakeholder engagement that provide a basis for stakeholders to contribute to the implementation of the agreement.

- **Explanatory documents (for directives)**

Not applicable.

- **Detailed explanation of the specific provisions of the proposal**

The EU-Korea Digital Trade Agreement is a self-standing agreement that is to be applied in the framework of the EU-Korea Framework Agreement and that forms, together with the FTA, the free trade area between the EU and Korea.

The general provisions of chapter one of the EU-Korea Digital Trade Agreement set out the objectives and scope of the agreement, and the definitions used throughout the agreement.

Chapter two of the EU-Korea Digital Trade Agreement comprises the body of the agreement and includes the digital trade commitments. The commitments are of a binding nature and range from commitments on cross-border data flows and online consumer protection, to commitments on the protection of source code of software. The commitments generally aim to enhance consumer protection online, provide legal certainty for businesses, and address unjustified barriers to digital trade.

Section A of chapter two, on data flows with trust, includes provisions that are in line with EU practice based on the 2018 horizontal provisions on cross-border data flows and the protection of personal data and privacy in trade agreements[14], which recognise each Party's right to determine the appropriate level of privacy and personal data protection.

Chapter three of the EU-Korea Digital Trade Agreement provides for horizontal exceptions, a dispute settlement mechanism, an institutional framework, and the final provisions of the agreement. Where relevant, the title makes applicable, by cross-reference, the relevant

[14] https://ec.europa.eu/newsroom/just/items/627665/en.

provisions of the FTA which provide the framework for the application of the EU-Korea Digital Trade Agreement.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 207(4), first subparagraph, in conjunction with Article 218(5) thereof,

Having regard to the proposal from the European Commission,

The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725 and delivered an opinion on [date of the opinion],

Whereas:

(1) On 27 June 2023, the Council authorised the Commission to open negotiations for digital trade disciplines with the Republic of Korea.

(2) On 10 March 2025, the negotiations of the Digital Trade Agreement between the European Union and the Republic of Korea (‘the Agreement’) were successfully concluded by the Commission on behalf of the Union.

(3) Therefore, the Agreement should be signed on behalf of the Union, subject to its conclusion at a later date.

(4) In accordance with the Treaties, it is for the Commission to ensure the signing of the Agreement,

HAS ADOPTED THIS DECISION:

Article 1

The signing, on behalf of the Union, of the Digital Trade Agreement between the European Union and the Republic of Korea ('the Agreement') is hereby authorised, subject to the conclusion of the said Agreement.

Article 2

This Decision shall enter into force on the day of its adoption.

Done at Brussels,

For the Council
The President