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ANNEX

ANNEX

to the

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

ANNEX

AGREEMENT
ON DIGITAL TRADE
BETWEEN THE EUROPEAN UNION
AND THE REPUBLIC OF KOREA

The European Union, hereinafter referred to as "the Union",

and

the Republic of Korea, hereinafter referred to as "Korea",

hereinafter jointly referred to as the "Parties" or individually referred to as a "Party",

BUILDING on their deep and longstanding partnership, based on the common principles and values reflected in the Framework Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part, done at Brussels, on 10 May 2010 (hereinafter referred to as the "Framework Agreement"), by giving effect to its provisions on trade;

DESIRING to deepen the free trade area established by the Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part, done at Brussels, on 6 October 2010 (hereinafter referred to as the "Free Trade Agreement");

RECOGNISING the EU-Korea Digital Partnership (hereinafter referred to as the "Digital Partnership"), signed on 28 November 2022, as an initiative to promote cooperation between the Union and Korea, in a variety of areas of the digital economy and to create opportunities for joint initiatives and efforts in new and emerging areas of the digital economy;

RECOGNISING the EU-Korea Digital Trade Principles (hereinafter referred to as the "Digital Trade Principles"), signed on 30 November 2022, as a key deliverable of the EU-Korea Digital Partnership, reflecting the Parties' joint commitment to an open digital economy and providing a common framework to boost digital trade;

ACKNOWLEDGING the importance of the digital economy and digital trade and that continued economic success depends on the combined ability of the Parties to harness technological advances to improve existing businesses, create new products and markets, and enhance daily life;

RECOGNISING the economic opportunities for businesses and the wider access to goods and services for consumers brought about by the digital economy and digital trade;

RESOLVED to deepen their economic relations in new and emerging areas, within the context of

their bilateral preferential trade relations;

DETERMINED to strengthen their bilateral preferential trade relationship as part of and in a manner coherent with their overall relations, and recognising that this Agreement will form a new climate for the development of digital trade between the Parties;

EMPHASISING the importance of promoting open, transparent, non-discriminatory and predictable regulatory environments for facilitating digital trade;

RECOGNISING the importance of the secure and responsible development and use of digital technologies to foster public trust;

SHARING a vision of digital trade as a key enabler of sustainable development and contributor to the green and digital transformation of their economies and therefore considering that digital trade rules should be future-proofed and responsive to innovation and emerging technologies;

REAFFIRMING their commitments to the principles of sustainable development in the Free Trade Agreement;

DETERMINED to strengthen their economic, trade and investment relationship in accordance with the objectives of sustainable development, in its economic, social and environmental dimensions, and to promote digital trade under this Agreement in a manner mindful of high levels of environmental and labour protection and relevant internationally recognised standards and international agreements;

CONVINCED that digital trade supports entrepreneurship and empowers businesses of all sizes to participate in the global economy by enhancing interoperability, innovation, competition, and access to information and communications technologies, notably for women entrepreneurs and micro, small and medium-sized enterprises, while promoting digital inclusion of groups and individuals that may face disproportionate barriers to digital trade;

RECOGNISING the importance of transparency in international trade and investment, which is to the benefit of all stakeholders, and reaffirming the relevant Parties' commitments reflected in the Free Trade Agreement;

SEEKING to establish a modern and dynamic framework for cooperation that corresponds to the fast-paced and evolving digital economy and digital trade;

AFFIRMING the Parties' right to regulate within their territories to achieve legitimate policy objectives;

COMPLEMENTING the Parties' international and regional leadership roles in the pursuit of ambitious benchmarks, rules and standards for the digital economy and digital trade;

AFFIRMING their commitment to the Charter of the United Nations, signed in San Francisco on 26 June 1945 and having regard to the principles articulated in the Universal Declaration of Human Rights, adopted by the General Assembly of the United Nations on 10 December 1948;

BUILDING upon their respective rights and obligations under the Agreement Establishing the World Trade Organization (hereinafter referred to as the "WTO Agreement"), done at Marrakesh, on 15 April 1994, and other multilateral and bilateral agreements and international instruments of cooperation to which both Parties are party,

HAVE AGREED AS FOLLOWS:

CHAPTER ONE

GENERAL PROVISIONS

ARTICLE 1

Objective

1. The objective of this Agreement is to facilitate digital trade between the Parties, provide legal certainty for businesses and consumers engaged therein, enhance their protection in digital transactions, and foster open, free and fair online environment in accordance with the provisions of this Agreement.

2. This Agreement shall be applied within the framework of the Framework Agreement and shall, together with the Free Trade Agreement, form the free-trade area consistent with Article XXIV (Territorial Application – Frontier Traffic – Customs Unions and Free-trade Areas) of the General Agreement on Tariffs and Trade 1994 (hereinafter referred to as "GATT 1994") and Article V (Economic Integration) of the General Agreement on Trade in Services (hereinafter referred to as "GATS").

ARTICLE 2

Scope

1. This Agreement applies to measures of a Party affecting trade enabled by electronic means.

2. This Agreement does not apply to:

(a) audio-visual services;

(b) services supplied or activities performed in the exercise of governmental authority; and

(c) data held or processed by or on behalf of a Party, or measures related to such data[1], including measures related to the collection, storage or processing of such data, except as provided for in Article 16 (Open Government Data).

ARTICLE 3

Right to Regulate

The Parties reaffirm their right to regulate within their territories to achieve legitimate policy objectives, such as the protection of public health, social services, public education, safety, environment or public morals, social or consumer protection, privacy and data protection, and the promotion and protection of cultural diversity.

ARTICLE 4

Definitions

For the purpose of this Agreement:

(a) "activities performed in the exercise of governmental authority" means activities carried out neither on commercial basis nor in competition with one or more economic operators;

(b) "commercial electronic message" means an electronic message which is sent for commercial purposes to an electronic address of a person through any telecommunications service that is offered to the public generally[2], comprising at least electronic mail, text and multimedia messages (SMS and MMS), and, to the extent provided for under the laws or regulations of a Party, other types of electronic messages;

(c) "consumer" means any natural person engaging in digital trade for other than professional purposes;

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1 For greater certainty, such measures include those relating to computing facilities or network elements used for the collection, storage or processing of such data.

2 For greater certainty, this definition is without prejudice to Korea's ability to regulate commercial electronic messages sent through non-public telecommunication services.

(d) "electronic authentication" means the process or act of verifying the identity of a natural or juridical person involved in an electronic communication or transaction, or ensuring the integrity of an electronic communication;

(e) "electronic invoicing" means the exchange of an electronic invoice document between a supplier and a buyer;

(f) "electronic invoice" means an invoice that has been issued, transmitted and received in a structured data format that allows for its automatic and electronic processing;

(g) "electronic payments" means the payer's transfer of a monetary claim on a person that is acceptable to the payee and made through electronic means, but does not include payment services of central banks involving settlement between financial service suppliers;

(h) "electronic registered delivery service" means a service that makes it possible to transmit data between parties by electronic means and provides evidence relating to the handling of the transmitted data, including proof of sending and receiving the data, and that protects transmitted data against the risk of loss, theft, damage or any unauthorised alteration;

(i) "electronic signature" means data in electronic form that is in, affixed to, or logically associated with an electronic data message that may be used to identify the signatory in relation to the data message and indicate the signatory's approval of the information contained in the data message;

(j) "electronic transmission" means a transmission made using any electromagnetic means and includes the content of the transmission;

(k) "end-user" means a natural or juridical person who purchases or subscribes to an Internet access service from an Internet access service provider;

(l) "financial service" means financial service as defined in paragraph 2 of Article 7.37 (Scope and Definitions) of the Free Trade Agreement;

(m) "government data" means data owned or held by any level of government or by a public

institution[3];

(n) "juridical person" means any legal entity duly constituted or otherwise organised under applicable law, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association[4];

(o) "measure" means any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action or any other form;

(p) "measures of a Party" means any measures adopted or maintained by:

(i) central, regional or local governments or authorities; and

(ii) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities;

(q) "personal data" means any information relating to an identified or identifiable natural person[5];

(r) "service" means any service in any sector except services supplied in the exercise of governmental authority;

(s) "service supplier" means any natural or juridical person that seeks to supply or that supplies a service;

(t) "services supplied in the exercise of governmental authority" means services as defined in point (c) of Article I:3 of GATS, and point 1(b) of the GATS Annex on Financial Services, where applicable;

(u) "territory" means with respect to each Party, the area where this Agreement applies in

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[3] For greater certainty, the term "public institution" is to be understood in accordance with each Party's law.

[4] All forms of commercial presence of a juridical person, including a branch or a representative office, shall be accorded the same treatment as that of a juridical person under this Agreement.

[5] For greater certainty, this includes personal credit information.

accordance with Article 41 (Territorial Application);

(v) "unsolicited commercial electronic message" means a commercial electronic message that is sent without the consent of the recipient or despite the explicit rejection of the recipient; and

(w) "WTO" means the World Trade Organization.

CHAPTER TWO

DIGITAL TRADE DISCIPLINES

SECTION A

DATA FLOWS WITH TRUST

ARTICLE 5

Cross-Border Data Flows

1. The Parties are committed to ensuring cross-border transfer of data to facilitate digital trade, while recognising that each Party may have its own regulatory requirements in that regard.

2. To that end, a Party shall not adopt or maintain measures which prohibit or restrict cross-border transfer of data between the Parties, by:

(a) requiring the use of computing facilities or network elements in the Party's territory for processing of data, including by imposing the use of computing facilities or network elements that are certified or approved in the territory of the Party;

(b) requiring the localisation of data in the Party's territory for storage or processing;

(c) prohibiting storage or processing of data 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;

(e) prohibiting the transfer of data into the territory of the Party; or

(f) requiring the approval of the Party prior to the transfer of data to the territory of the other Party[6].

3. Nothing in this Article shall prevent a Party from adopting or maintaining a measure inconsistent with paragraph 2 to achieve a legitimate public policy objective[7], provided that the measure:

(a) is not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade; and

(b) does not impose restrictions on transfers of information or the use or location of computing facilities greater than are necessary to achieve the objective.

4. This Article applies to the cross-border transfer of financial data by a financial service

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6 For greater certainty, point (f) of paragraph 2 does not prevent a Party from:
(a) subjecting the use of a specific transfer instrument or a particular cross-border transfer of data to approval on grounds relating to the protection of personal data and privacy, in compliance with Article 6;
(b) requiring the certification or conformity assessment of Information Communications Technology products, services and processes, including Artificial Intelligence, before their commercialisation or use in its territory, to ensure compliance with laws and regulations consistent with this Agreement or for cybersecurity purposes, in compliance with paragraph 3 of this Article and Articles 6(4), 27 (Prudential Carve-Out), 28 (General Exceptions) and 29 (Security Exception); or
(c) requiring that entities processing data protected by intellectual property rights or confidentiality obligations resulting from the laws and regulations of a Party consistent with this Agreement, respect such rights or obligations when transferring the data across borders, including with regard to access requests by courts and authorities of third countries, in compliance with Article 28 (General Exceptions).

7 For the purposes of this Article, "legitimate public policy objective" shall be interpreted in an objective manner and shall enable the pursuit of objectives such as the protection of public security, public morals, or human, animal or plant life or health, the maintenance of public order, the protection of other fundamental interests of society such as online safety, cybersecurity, safe and trustworthy artificial intelligence, or the protection against the dissemination of disinformation, or other similar objectives of public interest, taking into account the evolving nature of digital technologies.

supplier where processing of such data is required in the ordinary course of business of such financial service supplier[8]. Points (a) to (d) of paragraph 2 shall not apply to the provisions laid down in Article 11(1), and Article 14-2(7), of Korea's Regulation on Supervision of Electronic Financial Transactions (Korea Financial Services Commission Notice No.2025-4, February 5, 2025) implementing the Electronic Financial Transactions Act (Law No.19734, September 14, 2023)[9].

5. For greater certainty, paragraphs 3 and 4 do not affect the interpretation of other exceptions in this Agreement and their application to this Article, and the right of a Party to invoke any of them.

6. The Parties shall keep the implementation of this Article under review and assess its functioning within three years of the entry into force of this Agreement. A Party may at any time request from the other Party to review the list of restrictions listed in paragraph 2. Such request shall be accorded sympathetic consideration.

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8 Pursuant to Article 3 (Right to Regulate), consistent with this Agreement, the Parties reaffirm their right to regulate and supervise the supply of financial services within their territories to achieve legitimate policy objectives.

9 Measures adopted or maintained pursuant to the provisions referred to in this paragraph may not prohibit the transfer of financial data in any form for data processing outside the territory of Korea.

ARTICLE 6

Protection of Personal Data and Privacy

1. The Parties recognise that individuals have a right to the protection of personal data and privacy and that high standards in this regard contribute to enhancing consumer confidence in the digital economy and to the development of trade.

2. To this end, each Party shall adopt or maintain a legal framework that provides for the protection of personal data of individuals engaged in digital trade.

3. In the development of its legal framework for the protection of personal data, each Party should take into account principles and guidelines developed by relevant international bodies with respect to core principles such as lawfulness, data quality, purpose specification, collection and use limitation, limited data retention, data security, transparency, accountability, enforceable rights of individuals such as access, rectification, deletion, independent oversight and effective redress.

4. Each Party shall ensure that its legal framework adopted or maintained under paragraph 2 provides non-discriminatory protection of personal data for individuals.

5. Nothing in this Agreement shall prevent a Party from adopting or maintaining measures on the protection on personal data and privacy, including with respect to cross-border transfer of personal data, provided that the law of the Party provides for instruments enabling such transfers under conditions of general application[10] for the protection of the data transferred.

6. Each Party shall inform the other Party about any measure it may adopt or maintain in accordance with paragraph 5.

7. Each Party shall publish information on the protection of personal data and privacy it provides to individuals engaged in digital trade, including guidance on how:

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[10] For greater certainty, "conditions of general application" refer to conditions formulated in objective terms that apply horizontally to an unidentified number of economic operators and thus cover a range of situations and cases.

(a) individuals can pursue remedies; and

(b) businesses can comply with legal requirements.

8. The Parties shall endeavour to exchange information on and share experiences of the use of mechanisms for the transfer of personal data, as appropriate.

SECTION B

SPECIFIC PROVISIONS

ARTICLE 7

Customs Duties on Electronic Transmissions

1. Neither Party shall impose customs duties on electronic transmissions.

2. For greater certainty, paragraph 1 does not preclude a Party from imposing internal taxes, fees or other charges on electronic transmissions, in a manner not inconsistent with this Agreement.

ARTICLE 8

No Prior Authorisation

A Party shall endeavour not to require prior authorisation solely on the ground that a service is provided online[11], or adopt or maintain any other requirement having an equivalent effect.

ARTICLE 9

[11] A service is provided online when it is provided by electronic means and without the parties being simultaneously present.

Electronic Contracts

Each Party shall endeavour to ensure that contracts may be concluded by electronic means and that its law neither creates obstacles to the use of electronic contracts nor results in contracts being denied their legal effect or legal validity solely on the basis that the contract has been made by electronic means.

ARTICLE 10

Electronic Authentication and Electronic Signatures[12]

1. A Party should not deny the legal effect, legal validity or admissibility as evidence in legal proceedings of an electronic document or an electronic signature solely on the basis 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 method or electronic signature for that transaction; or

(b) prevent parties to an electronic transaction from having the opportunity to establish before judicial and administrative authorities that their transaction complies with any legal requirements with respect to electronic authentication or electronic signatures.

3. Notwithstanding paragraph 2, a Party may require that for a particular category of transactions, the method of electronic authentication or the electronic signature is certified by an accredited authority in accordance with the law of that Party 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, in accordance with its

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12 For greater certainty, nothing in this Article 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.

law.

4. To the extent provided for under its laws or regulations, a Party shall apply paragraphs 1 to 3 to electronic seals, electronic time stamps and electronic registered delivery services.

5. The Parties shall encourage the use of interoperable electronic authentication.

6. Parties may work together on a voluntary basis, to encourage the mutual recognition of electronic signatures.

ARTICLE 11

Source Code

1. Neither Party shall 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.

2. For greater certainty:

(a) Article 27 (Prudential Carve-Out), Article 28 (General Exceptions) and Article 29 (Security Exceptions) may apply to measures of a Party adopted or maintained in the context of a certification procedure;

(b) paragraph 1 does not apply to the voluntary transfer of, or granting of access to, source code of software by a natural or juridical person of the other Party on a commercial basis, such as in the context of a public procurement transaction or other freely negotiated contracts; and

(c) paragraph 1 does not affect the right of regulatory authorities, law enforcement or judicial bodies of a Party to require the modification of source code of software to comply with its laws or regulations that are not inconsistent with this Agreement.

3. Nothing in this Article shall affect:

(a) the right of regulatory authorities, law enforcement, judicial or conformity assessment bodies[13] of a Party to require the transfer of, or access to, source code of software, either prior to or following import, export, distribution, sale or use of such software, for investigation, inspection or examination, enforcement action or judicial proceeding purposes, to secure compliance with its laws and regulations pursuing legitimate public policy objectives[14], subject to safeguards against unauthorised disclosure;

(b) the requirements by a court, administrative tribunal, competition authority~~,~~ or other relevant body of a Party to remedy a violation of competition law or requirements pursuant to a Party's laws or regulations that are not inconsistent with this Agreement to provide proportionate and targeted access to the source code of software that is necessary to address barriers to entry in digital markets to ensure these markets remain competitive, fair, open and transparent;

(c) the protection and enforcement of intellectual property rights; or

(d) the right of a Party to take measures in accordance with Article III of the WTO Agreement on Government Procurement.

ARTICLE 12

Online Consumer Trust

1. The Parties recognise the importance of transparent and effective measures that enhance consumer confidence and trust in electronic commerce.

2. To this end, each Party shall adopt or maintain measures that ensure the effective protection of consumers engaged in electronic commerce, including measures that:

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13 For the purposes of this Article, "conformity assessment body" refers to a relevant governmental body, agency or authority of a Party, or non-governmental body in the exercise of powers delegated by a governmental body or authority of a Party, carrying out the procedures of assessment of conformity with applicable laws or regulations of that Party.

14 These may include those listed in the footnote to Article 5(3) (Cross-Border Data Flows).

(a) proscribe fraudulent, misleading and deceptive commercial practices that cause harm, or potential harm, to consumers engaged in electronic commerce;

(b) require suppliers of goods or services to act in good faith and abide by fair commercial practices;

(c) require suppliers of goods or services to provide complete, accurate and transparent information on those goods or services, as well as on their identity and contact details[15];

(d) ensure the safety of goods and, where applicable, services during normal or reasonably foreseeable use; and

(e) grant consumers access to redress or recourse to claim their rights, including a right to remedies in cases where goods or services are paid and not delivered or provided as agreed.

3. For the purpose of this Article, "fraudulent, misleading and deceptive commercial practice" includes:

(a) making material misrepresentations[16], including implied factual misrepresentations or false claims as to matters such as the qualities, price, suitability for purpose, quantity or origin of goods or services;

(b) advertising goods or services for supply without intention or reasonable capability to supply;

(c) failing to deliver goods or provide services to a consumer after the consumer is charged unless justified on reasonable grounds; or

(d) charging a consumer for goods or services not requested.

4. The Parties recognise the importance of affording to consumers engaged in electronic commerce, consumer protection at a level not less than that afforded to consumers engaged in

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15 In the case of intermediary service suppliers, this also includes the identity and contact details of the actual supplier of the good or the service.

16 For the purposes of this Article, "material misrepresentations" refer to misrepresentations that are likely to affect a consumer's conduct or decision to use or purchase a good or a service.

other forms of commerce.

5. The Parties recognise the importance of cooperation between their respective consumer protection agencies or other relevant bodies on activities related to cross-border electronic commerce, as well as the importance of entrusting them with adequate enforcement powers to enhance online consumer protection.

6. Each Party shall make its consumer protection laws and regulations publicly available and easily accessible.

7. The Parties recognise the benefits of mechanisms, including alternative dispute resolution, to facilitate the resolution of disputes arising from electronic commerce transactions.

ARTICLE 13

Unsolicited Commercial Electronic Messages

1. The Parties recognise the importance of promoting confidence and trust in electronic commerce, including through transparent and effective measures that limit unsolicited commercial electronic messages. To this end, each Party shall adopt or maintain measures that:

(a) require suppliers of commercial electronic messages to facilitate the ability of recipients[17] to prevent ongoing reception of those messages; and

(b) require the consent, as specified in the law of each Party, of recipients to receive commercial electronic messages.

2. Notwithstanding point (b) of paragraph 1, each Party shall allow natural or juridical persons who have collected, in the context of the supply of goods or services and in accordance with

[17] For the purposes of this Article, measures adopted or maintained in relation to recipients by the Union shall apply to natural persons. Measures adopted or maintained by Korea in relation to recipients shall apply to natural and juridical persons.

its law, the contact details of a recipient, to send commercial electronic messages to that recipient for their own similar goods or services[18].

3. Each Party shall ensure that commercial electronic messages are clearly identifiable as such, clearly disclose on whose behalf they are sent, and contain the necessary information to enable recipients to request cessation of those messages free of charge and at any time.

4. Each Party shall provide recipients with access to redress or recourse against suppliers of unsolicited commercial electronic messages that do not comply with the measures adopted or maintained pursuant to paragraphs 1 to 3.

5. The Parties shall endeavour to cooperate in appropriate cases of mutual concern regarding the regulation of unsolicited commercial electronic messages.

ARTICLE 14

Cooperation on Digital Trade Issues

1. The Parties acknowledge the importance of the Digital Partnership in promoting their bilateral cooperation in a variety of areas of digital economy and creating opportunities for joint initiatives and efforts in new and emerging areas of digital economy.

2. To complement the cooperation under the Digital Partnership and recognising the relevant cooperation under the Free Trade Agreement, including in the Committee on Trade and Sustainable Development established pursuant to Article 15.2(2) (Specialised Committees) of the Free Trade Agreement, 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 authentication and the mutual recognition of electronic signatures;

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[18] For greater certainty, this does not prevent a Party from requiring consent of a recipient to receive such messages after expiry of a period, as defined in the law of that Party, following the supply of goods or services.

(b) the treatment of unsolicited commercial electronic messages;

(c) the protection of consumers;

(d) the best practices and information on cross-border logistics; and

(e) other matters relevant to the development of digital trade, including those referred to in the Digital Trade Principles.

3. For greater certainty, regulatory cooperation on Parties' rules and safeguards for the protection of personal data and privacy, including on cross-border transfers of personal data, is subject to the application of Article 6 (Protection of Personal Data and Privacy).

ARTICLE 15

Open Internet Access

1. Each Party shall endeavour to ensure that end-users in its territory have the ability to:

(a) access and use lawful services and applications of their choice available on the Internet, subject to non-discriminatory, reasonable, transparent and proportionate network management that does not block or slow down Internet traffic for unfair commercial advantage[19];

(b) connect the devices of their choice to the Internet, provided that such devices do not harm other devices, the network or services provided over the network; or

(c) access transparent and clear information on the network management practices of their Internet access service supplier.

2. For greater certainty, nothing in this Article shall prevent the Parties from adopting measures with the aim of protecting public safety with regard to users online, in accordance with this

[19] For the purposes of point (a) of paragraph 1, the Parties recognise that an Internet access service supplier that offers certain content only to its end-users would not be acting contrary to that principle.

Agreement.

ARTICLE 16

Open Government Data

1. The Parties recognise that facilitating public access to, and use of, government data contributes to stimulating economic and social development, competitiveness, productivity and innovation.

2. To the extent that a Party chooses to make government data digitally available for public access and use, it shall endeavour to ensure that the data is:

(a) in a format that allows it to be easily searched, retrieved, used, reused, and redistributed;

(b) made available in a machine-readable and, where relevant, spatially-enabled format;

(c) accompanied by metadata, which is as standard as possible;

(d) made available via reliable, user-friendly and freely available application programming interfaces, to the extent possible;

(e) regularly updated;

(f) not subject to conditions that are discriminatory or that unnecessarily restrict re-use; and

(g) made available for reuse in full compliance with a Party's personal data protection rules, including appropriate anonymisation.

3. The Parties shall endeavour to cooperate to identify ways in which each Party can expand access to, and use of, government data that the Party has made public, with a view to enhancing and generating business opportunities, beyond its use by the public sector.

ARTICLE 17

Electronic Invoicing

1. The Parties recognise the importance of electronic invoicing to increase the efficiency, accuracy and reliability of commercial transactions and procurement through electronic means. Each Party recognises the benefits of ensuring interoperability of the frameworks used for electronic invoicing in its territory with the frameworks used for electronic invoicing in the other Party's territory, and the importance of electronic invoicing standards as a key element to that end.

2. Each Party shall ensure that the measures related to electronic invoicing in its territory are designed to support cross-border interoperability between the Parties' electronic invoicing frameworks. To this end, the Parties shall take into account international standards, guidelines or recommendations, where they exist.

3. The Parties shall endeavour to:

(a) share best practices pertaining to electronic invoicing and collaborate on promoting the global adoption of interoperable frameworks for electronic invoicing;

(b) collaborate on initiatives that promote, encourage, support or facilitate the adoption of electronic invoicing by businesses;

(c) promote the existence of underlying policies, infrastructure and processes that support electronic invoicing; and

(d) generate awareness of, and build capacity for, electronic invoicing.

ARTICLE 18

Paperless Trading

1. With a view to creating a paperless border environment for trade in goods, the Parties

recognise the importance of eliminating paper forms and documents required for import, export or transit of goods. To that end, the Parties are encouraged to eliminate paper forms and documents, as appropriate, and transition towards using forms and documents in data-based formats.

2. Each Party shall endeavour to make forms and documents required for import, export or transit of goods available to the public in electronic format.[20]

3. Each Party shall endeavour to accept forms and documents required for import, export or transit of goods submitted in electronic format as the legal equivalent of paper versions of those forms and documents.

4. The Parties shall cooperate bilaterally and in international fora to promote acceptance of electronic versions of forms and documents required for import, export or transit of goods.

5. In developing initiatives that provide for the use of paperless trading, each Party shall endeavour to take into account the methods agreed by international organisations.

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[20] For the purposes of this paragraph, the term "electronic format" includes any format suitable for automated interpretation and electronic processing without human intervention, as well as digitised images and forms.

ARTICLE 19

Single Window

1. In establishing or maintaining its single window pursuant Article 10.4.1 of the Agreement on Trade Facilitation, set out in Annex 1A of the WTO Agreement, each Party shall endeavour to enable the electronic submission of the documentation or data it requires for import, export or transit of goods through its territory through a single-entry point, to all its participating authorities or agencies.

2. The Parties shall develop cooperation, such as by exchanging, where relevant and appropriate, through a structured and recurrent electronic communication between the customs authorities of the Parties, customs-related information, as appropriate and in accordance with the law of each Party, for the purposes of improving risk management and the effectiveness of customs controls, targeting goods at risk in terms of revenue collection or safety and security, and facilitating legitimate trade.

3. The Customs Committee established pursuant to Article 15.2(1) (Specialised Committees) of the Free Trade Agreement:

(a) shall ensure the proper application of this Article and examine all issues arising therefrom;

(b) may formulate resolutions, recommendations or opinions which it considers necessary for the attainment of the common objectives and proper application of this Article; and

(c) on request of a Party, shall meet to discuss and endeavour to resolve any difference that may arise between the Parties on matters related to this Article.

4. The Customs Committee may also propose decisions to be adopted by the Trade Committee, established pursuant to Article 15.1(1) (Trade Committee) of the Free Trade Agreement, for the purposes of implementing this Article. The Trade Committee shall have the power to take such decisions.

ARTICLE 20

Electronic Payments

1. Noting the rapid growth of electronic payments, in particular those provided by new electronic payment services suppliers, the Parties recognise the importance of developing an efficient, safe and secure environment for cross-border electronic payments, including by recognising:

(a) the benefit of supporting the development of safe, efficient, trustworthy, secure, affordable and accessible cross-border electronic payments by fostering the adoption and use of internationally accepted standards, promoting interoperability of electronic payments systems, and encouraging useful innovation and competition in electronic payment services;

(b) the importance of upholding safe, efficient, trustworthy, secure and accessible electronic payment systems through laws and regulations that, where appropriate, account for the risks of such systems; and

(c) the importance of enabling the introduction of safe, efficient, trustworthy, secure, affordable, and accessible electronic payment products and services in a timely manner.

2. To this end, each Party shall endeavour to:

(a) issue final decisions on regulatory or licensing approvals in a timely manner;

(b) take into account, for relevant electronic payment systems, internationally accepted payment standards to enable greater interoperability between electronic payment systems;

(c) encourage financial services suppliers and electronic payments service suppliers to use open platforms and architectures and to make available, in compliance with applicable data protection rules, technical interfaces of their financial products, services and transactions, to facilitate greater interoperability, competition, security and innovation in electronic payments, which may include partnerships with third-party providers, subject to appropriate risk management; and

(d) facilitate innovation and competition and the introduction of new financial and electronic payment products and services in a timely manner, such as by adopting regulatory and industry sandboxes.

3. Each Party shall make their respective law on electronic payments, including those pertaining to regulatory approval, licensing requirements, procedures and technical standards, publicly available in a timely manner.

ARTICLE 21

Cybersecurity

1. The Parties recognise that cybersecurity underpins digital economy and threats thereto undermine confidence in digital trade.

2. The Parties recognise the evolving nature of cyber threats. In order to identify and mitigate those threats and thereby facilitate digital trade, the Parties shall endeavour to:

(a) build the capabilities of their respective national entities responsible for cybersecurity incident response; and

(b) collaborate to identify and mitigate malicious intrusions or disseminations of malicious code that affect electronic networks of Parties, to address cybersecurity incidents in a timely manner and to share information for awareness and best practices.

3. Noting the evolving nature of cyber threats and their negative impact on digital trade, the Parties recognise the importance of risk-based approaches in addressing such threats while minimising trade barriers. Accordingly, to identify and protect against cybersecurity risks, detect cybersecurity events, and respond to and recover from cybersecurity incidents, each Party shall endeavour to use and encourage businesses within its territory to use risk-based approaches that rely on risk management best practices and on standards developed in a consensus-based, transparent and open manner.

ARTICLE 22

Standards, Technical Regulations and Conformity Assessment Procedures

1. For the purposes of this Article, the definitions set out in Annex 1 to the Agreement on Technical Barriers to Trade (hereinafter referred to as the "TBT Agreement") shall apply *mutatis mutandis*.

2. The Parties recognise the importance and contribution of standards, technical regulations and conformity assessment procedures in fostering a well-functioning digital economy, and reducing barriers to digital trade by increasing compatibility, interoperability and reliability.

3. The Parties shall encourage their respective bodies to participate and cooperate in areas of mutual interest at international fora to which both Parties are party, to promote the development and use of international standards relating to digital trade. In emerging areas of mutual interest in the digital economy, the Parties shall also endeavour to do so for services relevant to digital trade.

4. The Parties recognise that mechanisms which facilitate the cross-border recognition of conformity assessment results can facilitate digital trade. The Parties shall endeavour to avail themselves of such mechanisms, which include international recognition agreements on the acceptance of conformity assessment results by regulators. In emerging areas of mutual interest in the digital economy, the Parties shall also endeavour to do so for services relevant to digital trade.

5. To this end, in areas of mutual interest that are related to digital trade, the Parties shall endeavour or encourage their respective bodies to identify and cooperate on joint initiatives in the field of standards, technical regulations and conformity assessment procedures.

6. The Parties acknowledge the importance of information exchange and transparency with regard to the preparation, adoption and application of standards, technical regulations and conformity assessment procedures for digital trade and affirm their commitments relating to transparency under Articles 4.4 to 4.6 of the Free Trade Agreement. In emerging areas of mutual interest in the digital economy, the Parties acknowledge the importance of information exchange and transparency with regard to the preparation, adoption and application of

standards, technical regulations and conformity assessment procedures for services relevant to digital trade and shall endeavour to, upon request and where appropriate, encourage their respective bodies to provide information on standards, technical regulations and conformity assessment procedures relating to services relevant to digital trade.

ARTICLE 23

Small and Medium-Sized Enterprises and Startups

1. The Parties recognise the fundamental role of small and medium-sized enterprises (SMEs) and startups in the Parties' bilateral trade and investment relations and the opportunities digital trade may offer to such entities.

2. The Parties recognise the integral role of stakeholders, including businesses, in the Parties'[2] implementation of this Article.

3. With a view to enhancing opportunities for SMEs and startups to benefit from this Agreement, the Parties shall endeavour to exchange information and best practices in leveraging digital tools and technology to improve SMEs and startups participation in digital trade opportunities.

ARTICLE 24

Digital Inclusion

1. The Parties recognise the importance of digital inclusion to ensure that all persons and businesses have what they need to participate in, contribute to and benefit from the digital economy. To that end, the Parties recognise the importance of expanding and facilitating opportunities by removing barriers to participation in digital trade.

2. To this end, the Parties shall cooperate on matters relating to digital inclusion, including the participation in digital trade of persons who may face disproportionate barriers to their participation in digital trade. Such cooperation may include:

(a) sharing of experiences and best practices, including exchanges between experts, with respect to digital inclusion;

(b) identifying and addressing barriers to accessing digital trade opportunities;

(c) sharing methods and procedures for developing datasets and conducting analysis in relation to the participation in digital trade of persons who may face disproportionate barriers to their participation in digital trade; and

(d) any other areas as jointly agreed by the Parties.

3. Cooperation activities relating to digital inclusion may be carried out through the coordination, as appropriate, of the Parties' respective agencies and stakeholders.

4. The Parties shall endeavour to participate actively at the WTO and in other international fora to promote initiatives for advancing digital inclusion in digital trade.

ARTICLE 25

Information Sharing

1. Each Party shall establish or maintain a free and publicly accessible digital medium containing information regarding this Agreement, including:

(a) the text of this Agreement;

(b) a summary of this Agreement; and

(c) any additional information that a Party considers useful for SMEs' and startups' understanding of the benefits of this Agreement.

2. Each Party shall regularly review the information made available under this Article to ensure that the information and links are up-to-date and accurate.

3. To the extent possible, each Party shall endeavour to make the information made available under this Article available in English.

ARTICLE 26

Stakeholder Engagement

1. The Parties shall seek opportunities to promote the benefits of digital trade under this Agreement among stakeholders such as businesses, non-government organisations, academic experts and other stakeholders.

2. The Parties recognise the importance of stakeholder engagement and of promoting relevant initiatives and platforms within and between the Parties, as appropriate, within the context of this Agreement.

3. Where appropriate, the Parties may engage interested stakeholders such as businesses, non-government organisations and academic experts for the purposes of implementation efforts and further modernisation of this Agreement.

CHAPTER THREE

EXCEPTIONS, DISPUTE SETTLEMENT, INSTITUTIONAL AND FINAL PROVISIONS

SECTION A

EXCEPTIONS

ARTICLE 27

Prudential Carve-Out

1. Notwithstanding any other provisions of this Agreement, a Party shall not be prevented from

taking measures for prudential reasons[21], including:

(a) the protection of investors, depositors, policy-holders or persons to whom a fiduciary duty is owed by a financial service supplier;

(b) ensuring the integrity and stability of a Party's financial system.

2. Where such measures do not conform with the provisions of this Agreement, they shall not be used as a means of avoiding the Party's commitments or obligations under this Agreement.

3. Nothing in this Agreement shall be construed to require a Party to disclose information relating to the affairs and accounts of individual consumers or any confidential or proprietary information in the possession of public entities.

ARTICLE 28

General Exceptions

Article 2.15 (General Exceptions) and Article 7.50 (Exceptions) of the Free Trade Agreement shall apply to this Agreement, *mutatis mutandis*.

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21 It is understood that the term "prudential reasons" may include the maintenance of the safety, soundness, integrity or financial responsibility of individual financial service suppliers.

ARTICLE 29

Security Exceptions

Article 15.9 (Security Exceptions) of the Free Trade Agreement shall apply to this Agreement, *mutatis mutandis*.

ARTICLE 30

Balance-of-Payments Exceptions

Article 15.8 (Balance-of-Payments Exceptions) of the Free Trade Agreement shall apply to this Agreement, *mutatis mutandis*.

ARTICLE 31

Taxation

Article 15.7 (Taxation) of the Free Trade Agreement shall apply to this Agreement, *mutatis mutandis*.

SECTION B

DISPUTE SETTLEMENT

ARTICLE 32

Dispute Settlement

1. If a dispute arises between the Parties concerning the interpretation or application of this Agreement, the provisions of Chapter Fourteen (Dispute Settlement) of the Free Trade

Agreement and the Annexes thereto shall apply to this Agreement, *mutatis mutandis*. With respect to the settlement of disputes on financial services, Article 7.45 (Dispute Settlement) of the Free Trade Agreement shall also apply to this Agreement, *mutatis mutandis*.

2. Regarding any matter concerning the interpretation and application of this Agreement a Party may have recourse to the mediation mechanism set out in Annex 14-A (Mediation Mechanism for Non-Tariff Measures) of the Free Trade Agreement, which shall apply, *mutatis mutandis*.

ARTICLE 33

Transparency

Subject to the protection of confidential information, by way of complement to the provisions in Chapter Fourteen (Dispute Settlement) of the Free Trade Agreement, each Party shall promptly make public:

(a) a request for consultations pursuant to Article 14.3(2) (Consultations) of the Free Trade Agreement;

(b) a request for establishment of a panel pursuant to Article 14.4(2) (Initiation of the Arbitration Procedure) of the Free Trade Agreement;

(c) the date of establishment of a panel in accordance with Article 14.5(4) (Establishment of the Arbitration Panel) of the Free Trade Agreement, the time-limit for *amicus curiae* submissions determined in accordance with Article 11.1 of Annex 14-B (Rules of Procedure for Arbitration) of the Free Trade Agreement and the working language for the panel proceedings determined in accordance with Article 13 of Annex 14-B (Rules of Procedure for Arbitration) of the Free Trade Agreement;

(d) its submissions and statements provided in the panel proceeding; and

(e) information that a mutually agreed solution pursuant to Article 14.13 (Mutually Agreed Solution) of the Free Trade Agreement has been reached. The Parties may also, subject to protection of confidential information, promptly make public a mutually agreed solution

reached pursuant to Article 14.13 (Mutually Agreed Solution) of the Free Trade Agreement, noting that the policy of the Union is to make such documents publicly available.

SECTION C
INSTITUTIONAL PROVISIONS

ARTICLE 34

Institutional Provisions

1. Article 15.1 (Trade Committee), Article 15.2 (Specialised Committees), Article 15.4 (Decision-making) and Article 15.5 (Amendments) of the Free Trade Agreement shall apply to this Agreement, *mutatis mutandis*.

2. The Parties hereby establish the Working Group on Digital Trade under the auspices of the Trade Committee. The Working Group on Digital Trade shall be responsible for the effective implementation of this Agreement, with the exception of Article 19 (Single Window). Article 15.3 (Working Groups) of the Free Trade Agreement shall apply to this Agreement, *mutatis mutandis*.

3. The Working Group on Digital Trade shall meet, at an appropriate level, once a year unless otherwise agreed by the Parties, or any time at the request of either Party or of the Trade Committee. It shall be co-chaired by representatives of the Union and Korea. The Working Group on Digital Trade shall agree on its meeting schedule and set its agenda.

4. The Working Group on Digital Trade shall inform the Trade Committee of its schedule and agenda sufficiently in advance of its meetings. It shall report to the Trade Committee on its activities at each regular meeting of the Trade Committee. The existence of the Working Group on Digital Trade shall not prevent either Party from bringing any matter directly to the Trade Committee.

SECTION D

FINAL PROVISIONS

ARTICLE 35

Disclosure of Information

1. Nothing in this Agreement shall be construed to require a Party to make available confidential information, the disclosure of which would impede law enforcement, would otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, whether public or private.

2. Where a Party submits information to the Working Group on Digital Trade, the Trade Committee or the Customs Committee, which is considered as confidential under its law, the other Party shall treat that information as confidential, unless the submitting Party agrees otherwise.

ARTICLE 36

Entry into Force

1. This Agreement shall be approved by the Parties in accordance with their own procedures.

2. This Agreement shall enter into force 60 days following the day in which the Parties exchange written notifications certifying that they have completed their respective applicable legal requirements and procedures for the entry into force of this Agreement or on another date as the Parties may agree.

3. Notifications shall be sent to the General Secretariat of the Council of the European Union and to the Ministry of Trade, Industry and Energy of Korea, or its successor.

ARTICLE 37

Duration

1. This Agreement shall be valid indefinitely.

2. A Party may notify in writing the other Party of its intention to denounce this Agreement.

3. The denunciation shall take effect six months after the notification under paragraph 2.

ARTICLE 38

Fulfilment of Obligations

1. The Parties shall take any general or specific measures required to fulfil their obligations under this Agreement. They shall see to it that the objectives set out in this Agreement are attained.

2. A Party may immediately take appropriate measures in accordance with international law in case of denunciation of this Agreement not sanctioned by the general rules of international law.

ARTICLE 39

Relations with Other Agreements

1. Unless specified otherwise, previous agreements between the Member States of the Union or the European Community or the Union and Korea are not superseded or terminated by this Agreement.

2. Section F (Electronic Commerce) of Chapter Seven (Trade in Services, Establishment and Electronic Commerce) of the Free Trade Agreement ceases to apply and is replaced by this Agreement.

3. For greater certainty, Sub-section E (Financial Services) of Section E (Regulatory Framework) of Chapter Seven (Trade in Services, Establishment and Electronic Commerce), including Article 7.46 (Recognition) of the Free Trade Agreement shall continue to apply to measures that fall within the scope of Article 7.37 (Scope and Definitions) of that Agreement.

4. This Agreement shall be an integral part of the overall bilateral relations between the Union and its Member States, of the one part, and Korea, of the other part, as governed by the Framework Agreement and the Free Trade Agreement. This Agreement constitutes a specific agreement giving effect together with the Free Trade Agreement to the trade provisions within the meaning of the Framework Agreement.

5. The Parties agree that nothing in this Agreement requires them to act in a manner inconsistent with their obligations under the WTO Agreement.

ARTICLE 40

No Direct Effect

1. For greater certainty, nothing in this Agreement shall be construed as conferring rights or imposing obligations on any persons, other than those rights and obligations created between the Parties under public international law.

2. A Party shall not provide for a right of action under its law against the other Party on the ground that a measure of the other Party is inconsistent with this Agreement.

ARTICLE 41

Territorial Application

This Agreement shall apply:

(a) with respect to the Union, to the territories in which the Treaty on European Union and the Treaty on the Functioning of the European Union apply, under the conditions laid down in those Treaties; and[2]

(b) with respect to Korea, to its territory.

References to "territory" in this Agreement shall be understood in this sense, unless explicitly stated otherwise.

ARTICLE 42

Authentic Texts

This Agreement is drawn up in duplicate in the Bulgarian, Croatian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Irish, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish, Swedish and Korean languages, each of these texts being equally authentic.