

## ESF Position Paper on the WTO Joint Statement Initiative towards launching negotiations for an International Agreement on E-Commerce

The European Services Forum (ESF) represents the interests of European services sectors committed to actively promoting the liberalisation of international trade and investment in services. ESF is a European private sector grouping that comprises major European service businesses and European service sector federations covering service sectors including (but not limited to) financial services, telecommunications and IT services, maritime transport, business and professional services, distribution, postal and express delivery, audio-visual and education services. All these services are traded electronically.

The European Union is by far the biggest exporter and importer of services in the world, bringing a net surplus of €130 billion to the European economy, accounting for more than half of our balance of payment surplus. All trade in goods and services – from the placing of an order to confirmation of delivery - now involves the electronic transfer of data. Data-transfer is today's all-purpose means of business communication, spurring economic growth and innovation in all industries.

The European Union is the world's most data-dependent actor in the global trading system, illustrating the importance of enabling digital trade for the growth of the European economy. The transfer of data from the EU to third country markets and from third countries into the EU is crucial to run the complex business operations necessary for value chains that cross many jurisdictions and that are regional and global.

All of this explains the very high interest of our organisation's members in the discussions that are currently taking place in Geneva on an initiative on E-commerce.

The European Services Forum welcomed the fact that, at the end of the WTO Ministerial Conference (MC11) last December in Buenos Aires, Trade Ministers from 71 countries adopted a Joint Statement on E-Commerce. This group, encompassing participants from developed, developing and least-developed countries, unveiled plans to move forward with discussions in this area.

They agreed to initiate exploratory work towards future WTO negotiations on trade-related aspects of electronic commerce, with participation open to all WTO members. ESF understands that Thailand recently decided to join the initiative as the 72<sup>nd</sup> country. Together, the group accounts for around 77 per cent of global trade, which is a significant proportion. ESF encourages all the participating countries to remain engaged and to contribute to the negotiations in a constructive spirit, and invites other countries to consider joining the initiative.

ESF calls for the adoption of a negotiating mandate in early 2019 to launch plurilateral negotiations - under the auspices of the WTO that would be accessible for all WTO members – that would look at setting up disciplines in various areas related to international e-commerce. ESF calls for the discussions to move smoothly and rapidly with a view to reaching an agreement if possible by the Twelfth WTO Ministerial (MC12) in June 2020 in Astana (Kazakhstan).

The European services industry considers that all issues should be on the negotiating table at the beginning of the talks and strongly encourage participating countries to aim at negotiating a high standard agreement that should include ambitious disciplines on as many issues as possible, notably:

- Taking firm commitments to provide transparency of all relevant regulations to foster trust in e-commerce platforms and the related e-commerce environment, including a common understanding/definition on the coverage of computer services;
- Ensuring cross border data flows, encompassing the prohibition of forced localisation of data-processing or data-storage, or of forced use of local computing facilities and the prohibition of requirements for transfer of or access to source code/encryption keys/algorithms, with possible limited negotiated exceptions;
- Banning permanently Customs Duties on Electronic Transmissions;
- Adopting rules on the conclusion of contracts by electronic means;
- Adopting rules on electronic trust and authentication services (e-signature), on online consumer trust, and on unsolicited commercial electronic messages (Spam, etc.);
- Adopting rules on Electronic Public Procurement, and on Electronic Auctions in Public Procurement.

The E-Commerce Agreement negotiations should also envisage discussing:

- Provisions on trade facilitation elements such as streamlined customs procedures;
- A review of the 1998 Reference Paper on telecommunications rules to adapt it to the needs of the global digital economy, in particular by ensuring equal conditions for market access for all digital services along the value chain;
- Provisions establishing cooperation on regulatory issues with regard to e-commerce and digital trade at large;
- Possible negotiation of relevant services market access commitments. Indeed, establishing new disciplines for e-commerce without enlarging the scope of the GATS commitments in services sectors that are essential for improving e-commerce activities would have a limited impact if they applied only to existing market access commitments; many of which are being relatively limited and date from a time when digital trade was only in its infancy.

ESF therefore encourages participating countries to envisage discussion aimed at a better non-discriminatory market access in many sectors relevant to improvement of e-commerce such as telecom services, IT and computer related services, distribution, advertising services, e-payment services, postal and express delivery services, transportation services and those ancillary to them, logistics and handling services, and others. Interested countries could simply unilaterally update their respective GATS schedules, without the need for a full-fledged market access negotiation.

This list is not exhaustive and aims essentially at providing the preliminary priorities for services sectors as key elements of an e-commerce agreement.

ESF fully recognizes that adoption of disciplines in all these areas will likely be difficult for some participating countries. We would therefore favour a possible progressive approach, whereby the WTO E-Commerce Agreement would include a first tier of rules to be adopted by all signatories, plus a possible second tier of disciplines which some countries would adopt subject to a negotiated transition period before full compliance, or subject to special and differential treatment.

For trade in goods and services to flow freely, there needs to be both trust among individuals that their personal data will be securely held and handled according to local privacy rules; and certainty for business that data protection regimes will be transparent, predictable, and as least trade-

restrictive as possible. The European Services Forum recognizes that data-security and appropriate and effective protection of personal data are essential and must be assured through compliance with local privacy and security regulations.

Any exceptions to the principles promoting cross-border data flow and avoiding forced localisation should therefore be limited to legitimate public policy objectives, such as the protection of personal data, be non-discriminatory, and only in full compliance with the provisions of GATS Articles XIV and XIV bis.

In addition to specific concrete disciplines and transparency requirements to which the participating countries should commit in such an international agreement on e-commerce, ESF recognises that there is also a need to look at issues that would aim at improving access to e-commerce to all countries, including developing and least developed countries. To that end, the negotiators should look at opportunities to include in the agreement the following elements:

- Identification of strategies for e-commerce readiness
- Access to ICT infrastructure and services
- Trade logistics and trade facilitation
- e-payment solutions
- Legal certainty and regulatory frameworks
- Capacity building and technical assistance
- Access to financing

On the third issue of “Trade logistics and trade facilitation”, ESF would encourage talks about possibility of improving commitments under the WTO “Trade Facilitation Agreement (TFA)” so as to facilitate cross-border trade in goods (customs facilitation issues), which will also benefit goods ordered through electronic platforms. Participating countries could also consider reviewing the second Information Technology Agreement (ITA II) to pursue the liberalisation of means of enabling further development of the digital economy.

Participating countries’ models for collecting tax on the importation of low-value cross-border shipments should be the least complex and burdensome possible, so as not to unduly burden Micro, Small and Medium-sized Enterprises wishing to engage in global trade.

ESF and its members express the hope that participating countries will take our recommendations into consideration, and wish to work constructively towards reflecting the digitalisation needs of all economies through an ambitious International Agreement on E-Commerce.

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## List of ESF Members Supporting the above Position

- Accountancy Europe
- Amfori
- Architects' Council of Europe – ACE
- British Telecom Plc
- BDO
- Bureau International des Producteurs et Intermédiaires d'Assurances – BIPAR
- BUSINESSEUROPE
- BUSINESSEUROPE WTO Working Group
- Danish Shipping
- Deutsche Telekom AG
- Deutsche Post DHL
- DI – Confederation of Danish Industries
- Digital Europe
- EK - Confederation of Finnish Industries
- EuroCommerce
- European Banking Federation – FBE
- European Community Shipowners' Associations – ECSA
- European Express Association – EEA
- European Federation of Engineering and Consultancy Associations – EFCA
- European Public Telecom Network – ETNO
- European Savings Banks Group – ESBG
- European Satellite Operators Association – ESOA
- European University Association – EUA
- Fédération de l'Industrie Européenne de la Construction – FIEC
- FratiniVergano European Lawyers
- HSBC Group
- IBM Europe, Middle East & Africa
- Inmarsat
- Institute of Chartered Accountants in England and Wales - ICAEW
- Insurance Europe
- Irish Business and Employers' Confederation - IBEC
- Law Society of England & Wales
- Le Groupe La Poste
- Microsoft Corporation Europe
- Mouvement des entreprises de France – MEDEF
- Oracle Europe, Middle East & Africa
- Orange
- PostEurop
- Prudential Plc.
- Refinitiv
- SELDIA – European Direct Selling Association
- Svenskt Näringsliv (Confederation of Swedish Enterprise)
- Telenor Group
- The CityUK
- UPS
- Vodafone
- Zurich Financial Services