

**Horizontal provisions for cross-border data flows and for
personal data protection
(in EU trade and investment agreements)**

Article A

Cross-border data flows

1. The Parties are committed to ensuring cross-border data flows to facilitate trade in the digital economy. To that end, ~~cross-border data flows shall not be restricted between the~~ Parties ~~by~~ shall not:

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

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

(iii) prohibiting storage or processing of data in the territory of the other Party or a non-Party;

(iv) makeing the cross-border transfer of data contingent upon use of computing facilities or network elements in the Partiesy's territory or upon localisation ~~requirements~~ in the Partiesy's territory.

2. The Parties shall keep the implementation of this provision under review and assess its functioning in 3 years following the entry into force of this Agreement. A Party may at any time propose to the other Party to review the list of restrictions listed in the preceding paragraph. Such request shall be accorded sympathetic consideration.

Article B

Protection of personal data and privacy

1. Each Party recognises that the protection of personal data and privacy is a fundamental right and that high standards in this regard contribute to trust in the digital economy and to the development of trade.
2. Each Party may adopt and maintain the safeguards it deems appropriate to ensure the protection of personal data and privacy, including through the adoption and application of rules for the cross-border transfer of personal data. Subject to the requirement that such measures be transparent, non-discriminatory and based on a justifiable public policy objective, Nothing in this Agreement shall affect prevent a Party from adopting or maintaining measures necessary for the protection of personal data and privacy afforded by the Parties' s respective safeguards.¹
3. For the purposes of this agreement, "personal data" means any information relating to an identified or identifiable natural person.
4. For greater certainty, the Investment Court System does not apply to the provisions in Articles A and B.

¹ A leaked copy of the May 8 Draft Council Conclusions on Data Flows states: "Nothing in trade agreements should prevent the EU and its Member States from enacting measures necessary to ensure personal data protection and privacy, including through the adoption and application of rules for the cross-border transfer of personal data. The EU and Member States' right to regulate in accordance with international obligations to achieve legitimate public policy objectives in the field of privacy and personal data protection should be guaranteed. In this regard, any rules restricting cross-border data flows should be transparent, non-discriminatory and based on justifiable public policy objective."

Article X

Cooperation on regulatory issues with regard to digital trade²

1. *The parties shall maintain a dialogue on regulatory issues raised by digital trade, which shall inter alia address the following issues:*
 - *the recognition and facilitation of interoperable cross-border electronic trust and authentication services;*
 - *the treatment of direct marketing communications;*
 - *the protection of consumers in the ambit of electronic commerce; and*
 - *any other issue relevant for the development of digital trade.*
2. *Such cooperation shall focus on exchange of information on the Parties' respective legislation on these issues as well as on the implementation of such legislation.*
3. For greater certainty, this provision shall not ~~apply to require~~ a Party's to create, modify or terminate any rules ~~and/or~~ safeguards for the protection of personal data and privacy, including on cross-border ~~data~~-transfers of personal data.

² Text in italics in paragraphs 1 and 2 denotes existing wording in trade agreements.