

It is time for the EU to rethink its digital trade policy and fully protect consumers' digital rights

The United States has [announced](#) that they no longer support the inclusion of rules on cross border data flows and source code in the negotiation for an international trade agreement on e-commerce. This negotiation is called the [Joint Statement Initiative on e-commerce](#). It gathers 90 countries member of the World Trade Organization (WTO), including the EU.

The United States explains that this decision aims at better preserving its policy space. Indeed, any commitments that countries agree to in trade agreements become an obligation they have to comply with when adopting and implementing their own laws. BEUC has for many years called to [reconsider this approach](#) to digital trade negotiations because the resulting obligations can limit the ability of governments to regulate digital topics and preserve consumer rights.

While the US finally considers these risks and is taking a step back, the EU continues to gamble with digital rights in its trade negotiations.

How trade negotiations can impact data protection and privacy

Data is flowing from the EU to other countries when consumers buy products online, watch social media videos or listen to music. Many digital services rely on collecting and processing personal data. At the same time, consumers wish to have control over their personal data. Scandals like Cambridge Analytica and the invasive and constant tracking and exploitation of people's data have eroded people's trust in cross-border data transfers.¹ A survey revealed that 72% of consumers across the globe are concerned about the collection of their personal data by companies online.²

Recent trade agreements include rules to make the flow of data across countries easier. For many years, BEUC and other civil society organisations have however requested that personal data protection and data flows be fully excluded from trade deals. That is because third countries could use trade deals to launch [litigation](#) against the EU over its data protection and privacy regime.

In BEUC's view, adequacy decisions are a better instrument to enable data flows. They are tools that are widely used and foreseen in the General Data protection Regulation (GDPR) to enable cross border data flows. The EU can decide to revoke these decisions unilaterally, if it considers that a third country no longer has a data protection regime that adequately protects EU citizens. This is not a possibility if data flows rules are part of trade agreements. BEUC has also urged for additional safeguards should the EU negotiate rules on data flows despite our concerns.

¹ <https://privacyinternational.org/learn/adtech>

² [Survey](#) conducted by Consumers International and the Federation of German Consumer Organization, vzbv for the G20 consumer summit in 2017. This echoes the figures of the [CIGI-Ipsos 2019 internet trust survey](#).

The Consumer Voice in Europe

We welcomed the [EU's 2018 decision to include stronger protections for privacy and personal data in trade agreements](#). This was supposed to be a non-negotiable red line for the EU. Since then, however, this red line has been significantly changed in the EU-UK agreement and appears now to have been further adapted in a recent agreement on data flows with Japan.

BEUC urges decision-makers not to set a precedent for other negotiations in the WTO or between the EU and Korea or Singapore. Many of our trading partners have very different, weaker data protection regimes. The risks of including rules on cross border data flows would be far greater for EU citizens' rights than the economic benefits that can potentially be achieved. Instead, the EU should encourage its partners to adhere to the only binding international treaty on data flows and personal data protection to date, the Convention 108³.

The potential effect of trade rules on tackling online harms, such as those from artificial intelligence

The EU now also systematically includes rules on **source code of software** in its trade agreements. The goal of these rules is to protect companies from being forced to disclose their source code to governments in order to obtain a license to operate in certain markets. This would come on top of existing protections companies can rely on, such as those of their trade secrets and intellectual property rights. To obtain this new layer of protection for businesses, strict conditions of access to source code are defined. These conditions in trade agreements will **make it very complicated for EU and national authorities to enforce new digital regulations and thus impede them from appropriately protecting European consumers and citizens.**

Including access to source code in trade agreements would also impede civil society organisations and academics from launching a complaint or alerting authorities of domestic regulation infringements⁴. For example, source code rules in trade agreements would prevent consumer organisations and academics from investigating suspected biases in an artificial intelligence (AI) system of a bank, used to assess credit worthiness, and to alert authorities in case of confirmed bias.

Furthermore, **it would make access to justice for people who have suffered damage and require compensation, for example from AI systems, providers close to impossible.** These trade rules would also prevent consumer organisations to successfully represent consumers in court due to problems with the burden of proof and provision of evidence of non-compliance with EU law.

The need to adapt EU digital trade policy

EU trade agreements must put people at their centre and fully protect their rights. After intense and well documented advocacy from civil society organisations, the EU no longer includes Investor-to-State Dispute Settlement (ISDS) mechanisms in its trade agreements. This is now perceived as a progress, not a step back. We therefore **call on the EU to rethink its digital trade policy and to no longer include rules on data flows and source code in its trade negotiations and agreements.** This is the next step towards a fairer EU trade policy.

³ <https://www.coe.int/en/web/data-protection/-/modernisation-of-convention-108>

⁴ See BEUC member vzbv [study](#) on the impact of trade rules on accountability of AI