

## Chapter 10 Electronic Commerce

### Article 10.1 Definitions

For the purposes of this Chapter:

**digital certificates** are electronic documents or files that are issued or otherwise linked to a Party, in an electronic communication or transaction, for the purposes of establishing the Party's identity;

**electronic authentication** means the process or act of providing authenticity and reliability verification for the Parties involved in an electronic signature; to ensure the integrity and security of an electronic communication or transaction;

**electronic signature** means data in electronic form that is in, affixed to, or logically associated with a data message which may be used to identify the signatory in relation to the data message and to indicate the approval of the signatory of the information contained in the data message;

**data message** means information generated, sent, received, or stored by electronic, optical, or similar means;

**electronic version of a document** means a document in electronic format prescribed by a Party, including a document sent by facsimile transmission;

**trade administration documents** means forms issued or controlled by a Party which must be completed by or for an importer or exporter in relation to the import or export of goods;

**unsolicited commercial electronic message** means an electronic message which is sent for commercial or marketing purposes to an electronic address, without the consent of the recipient or despite the explicit rejection of the recipient, through an Internet access service supplier;

**electronic transmission or transmitted electronically** means a transmission made using any electromagnetic means, including photonic means; and

**personal information** means any information, including data, about an identified or identifiable natural person.

## **Article 10.2      General Provisions**

1. The Parties recognise the economic growth and opportunities provided by electronic commerce, and the importance of avoiding unnecessary barriers to its use and development consistent with this Agreement.

2. The purposes of this Chapter are to promote electronic commerce between the Parties and the wider use of electronic commerce globally.

3. Considering the potential of electronic commerce as an instrument of social and economic development, the Parties recognise the importance of:

(a) the clarity, transparency, and predictability of their national regulatory frameworks to facilitate, to the extent possible, the development of electronic commerce;

(b) encouraging self-regulation in the private sector to promote confidence in electronic commerce, considering the interests of users, through initiatives such as industry guidelines, model contracts, codes of conduct, and seals of confidence;

(c) interoperability, to facilitate electronic commerce;

(d) innovation and digitization in electronic commerce;

(e) ensuring that international and national electronic commerce policies consider the interests of their actors;

(f) facilitating access to electronic commerce by Small and Medium Enterprises (hereinafter referred to as "SMEs")<sup>4</sup>, and

(g) guaranteeing the security of electronic commerce users, as well as their right to personal data protection.

4. The Parties shall, in principle, endeavour to ensure that bilateral trade in electronic commerce shall be no more restricted than comparable non-electronic bilateral trade.

## **Article 10.3      Transparency**

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<sup>4</sup> For the purposes of this Chapter, for Ecuador, "small and medium enterprises" includes micro enterprises as well as the social and solidarity economies as defined in Ecuador's domestic legislation.

1. Each Party shall publish as promptly as possible, or where that is not practicable, otherwise make publicly available, including on the Internet where feasible, all relevant measures of general application pertaining to or affecting the operation of this Chapter.

2. Each Party shall respond as promptly as possible to a relevant request from the other Party for specific information on any of its measures of general application pertaining to or affecting the operation of this Chapter.

#### **Article 10.4 Domestic Electronic Transactions Framework**

1. Each Party shall maintain a legal framework governing electronic transactions consistent with the principles of the *UNCITRAL Model Law on Electronic Commerce of 1996*.

2. Each Party shall adopt or maintain measures regulating electronic transactions based on the following principles:

(a) a transaction, including a contract, shall not be denied legal effect, validity or enforceability solely on the grounds that it is in the form of an electronic communication; and

(b) Parties should not arbitrarily discriminate between different forms of electronic transactions.

3. Nothing in Paragraphs 1 and 2 prevents a Party from making exceptions in its domestic law to the general principles outlined in Paragraphs 1 and 2.

4. Each Party shall endeavour to:

(a) minimise the regulatory burden on electronic commerce; and

(b) ensure that regulatory frameworks support the development of electronic commerce.

#### **Article 10.5 Electronic Authentication and Electronic Signatures**

1. No Party may adopt or maintain legislation for electronic signature that would deny the legal validity of a signature solely on the basis that the signature is in electronic form.

2. Each Party shall maintain domestic legislation for electronic signature that permits:

(a) parties to an electronic transaction to mutually determine the appropriate electronic signature and authentication method unless there is a domestic or international legal requirement to the contrary; and

(b) electronic authentication agencies to have the opportunity to prove before

judicial or administrative authorities a claim that their electronic authentication of electronic transactions complies with legal requirements with respect to electronic authentication.

3. Each Party shall work towards the mutual recognition of digital certificates and electronic signatures.

4. Each Party shall encourage the use of digital certificates in the business sector.

#### **Article 10.6 Online Consumer Protection**

1. Each Party shall, to the extent possible and in a manner considered appropriate, adopt or maintain measures which provide protection for consumers using electronic commerce that are at least equivalent to measures which provide protection for consumers of other forms of commerce.

2. The Parties recognise the importance of adopting and maintaining transparent and effective consumer protection measures for electronic commerce as well as other measures conducive to the development of consumer confidence.

3. Each Party shall adopt or maintain laws or regulations to provide protection for consumers using electronic commerce against fraudulent and misleading practices that cause harm or potential harm to such consumers.

4. The Parties recognise the importance of cooperation between their respective competent authorities in charge of consumer protection on activities related to electronic commerce in order to enhance consumer protection.

#### **Article 10.7 Online Personal Information Protection**

1. Recognizing the importance of protecting personal information in electronic commerce, each Party shall adopt or maintain domestic laws and other measures which ensure the protection of the personal information of the users of electronic commerce.

2. The Parties shall encourage juridical persons to publish, including on the Internet, their policies and procedures related to the protection of personal information.

3. The Parties shall cooperate, to the extent possible, for the protection of personal information transferred from a Party.

#### **Article 10.8 Paperless Trading**

1. Each Party shall endeavour to accept electronic versions of trade administration documents used by the other Party as the legal equivalent of paper documents, except where:

- (a) there is a domestic or international legal requirement to the contrary; or
- (b) doing so would reduce the effectiveness of the trade administration process.

2. Each Party shall endeavor to work towards developing a single window to government incorporating relevant international standards for the conduct of trade administration, recognising that each Party will have its own unique requirements and conditions.

#### **Article 10.9 Unsolicited Commercial Electronic Messages**

The Parties shall adopt or maintain measures to protect users from unsolicited commercial electronic messages.

1. Each Party shall adopt or maintain measures with respect to unsolicited commercial electronic communications that:

(a) require providers of unsolicited commercial electronic communications to provide the ability for recipients to prevent continued receipt of such messages; or

(b) will require the consent of the recipients, as applied in accordance with the legal system of each Party, to receive commercial electronic communications.

2. Each Party shall endeavor to establish mechanisms in place against providers of unsolicited commercial electronic communications that have failed to comply with measures adopted or maintained pursuant to paragraph 1.

3. The Parties shall endeavor to cooperate in appropriate cases of mutual interest related to the regulation of unsolicited commercial electronic messages.

#### **Article 10.10 Network Equipment**

1. Both Parties recognise the importance of network equipment, and products related to electronic commerce to the safeguarding of the healthy development of electronic commerce.

2. Both Parties should endeavour to create beneficial environment for public telecommunications networks, service providers or value-added service providers to independently choose the network equipment, products and technologies.

## **Article 10.11 Cooperation**

1. The Parties shall encourage cooperation in research and training activities that would enhance the development of electronic commerce, including by sharing best practices on electronic commerce development.

2. The Parties shall encourage cooperative activities to promote electronic commerce, including those that would improve the effectiveness and efficiency of electronic commerce.

3. The cooperative activities referred to in paragraphs 1 and 2 may include, but are not limited to:

- (a) sharing best practices about regulatory frameworks;
- (b) sharing best practices about online consumer protection, including unsolicited commercial electronic messages;
- (c) working together to assist small and medium enterprises to overcome obstacles to the use of electronic commerce; and
- (d) further areas as agreed between the Parties.

4. The Parties shall endeavour to undertake forms of cooperation that build on and do not duplicate existing cooperation initiatives pursued in international forums.

5. The Parties shall endeavour to provide technical assistance, share information and experiences on laws, regulations and programs in the field of electronic commerce, including those related to:

- (a) protection of personal information, particularly in order to strengthen international mechanisms for cooperation in compliance with the personal data protection legislation of each Party, to natural persons who participate in electronic commerce, for the exercise of the rights and resources for the protection of personal data contemplated in the legislation of each Party;
- (b) online consumer protection;
- (c) security in electronic communications;
- (d) electronic authentication; and
- (e) digital government.

6. The parties will endeavor to share and disseminate market alerts in order to prevent fraudulent business practices to the detriment of the consumer, in accordance

with each Parties' legislation.

#### **Article 10.12 Cooperation on Cybersecurity Matters**

The Parties recognise the importance of:

- (a) building the capabilities of their national entities responsible for cybersecurity incident response; and
- (b) using existing collaboration mechanisms to cooperate to identify and mitigate malicious intrusions or dissemination of malicious codes that affect the electronic networks of the Parties.

The Parties shall endeavor to promote actions for the prevention and protection against various types of cybersecurity incidents.

#### **Article 10.13 Data Innovation**

1. The Parties recognise that digitalisation and the use of data in the digital economy promote economic growth. To support the cross-border transfer of information by electronic means and promote data-driven innovation in the digital economy, the Parties further recognise the need to create an environment that enables and supports, and is conducive to, experimentation and innovation.

2. The Parties shall endeavour to support data innovation through:

- (a) collaborating on data-sharing projects, including projects involving researchers, academics and industry;
- (b) cooperating on the development of policies and standards for data portability; and
- (c) sharing research and industry practices related to data innovation.

#### **Article 10.14 SMEs and Start-ups**

1. The Parties recognise the fundamental role of SMEs and Start-ups in maintaining dynamism and enhancing competitiveness in the digital economy.

2. With a view towards enhancing trade and investment opportunities for SMEs in the digital economy, the Parties shall endeavour to:

- (a) exchange information and best practices in leveraging digital tools and technology to improve the capabilities and market reach of SMEs and Start-ups;
- (b) encourage participation by SMEs, and Start-ups in online platforms and other mechanisms that could help SMEs and Start-ups link with international suppliers, buyers and other potential business partners; and
- (c) foster close cooperation in digital areas that could help SMEs and Start-ups adapt and thrive in the digital economy.

**Article 10.15 Non-Application of Dispute Settlement**

No Party shall have the recourse to Chapter 13 (Dispute Settlement) of this Agreement for any matter arising under this Chapter.