

CHAPTER 9
ELECTRONIC COMMERCE

Article 9.1
Definitions

For purposes of this Chapter:

“broadcasting” means the transmission of signs or signals via any technology for the reception and/or display of aural and/or visual programme signals by all or part of the public;

“digital products” means computer programs, text, video, images, sound recordings, and other products that are digitally encoded and produced for commercial sale or distribution, and transmitted electronically. For greater certainty, digital products do not include digitised representations of financial instruments, including money;

“electronic authentication” means the process or act of verifying the identity of a party to an electronic communication or transaction and ensuring the integrity of an electronic communication;

“electronic transmission or transmitted electronically” means transmissions made using any electromagnetic means, including by photonic means;

“personal data” means any data, including information, about an identified or identifiable natural person;

“trade administration documents” means forms a Party issues or controls that must be completed by or for an importer or exporter in connection with the import or export of goods.

Article 9.2
Scope and General Provisions

1. This Chapter shall apply to measures adopted or maintained by a Party affecting trade by electronic means.
2. The Parties recognise the economic growth and opportunities provided by electronic commerce, and the importance of promoting consumer confidence in electronic commerce and of avoiding barriers to its use and development.
3. For greater certainty, measures affecting the supply of a service delivered or performed electronically are subject to the obligations contained in the relevant provisions of Chapter 7 (Cross-Border Trade in Services), Chapter 10 (Financial Services), and Chapter 12 (Investment), including any exceptions and non-conforming measures set out in Article 7.6 (Non-Conforming Measures) of Chapter 7 (Cross-Border Trade in Services), Article 10.6 (Non-Conforming Measures) of Chapter 10 (Financial Services), or Article 12.9 (Non-Conforming Measures) of Chapter 12 (Investment) that are applicable to such obligations.

4. This Chapter shall not apply to government procurement.

Article 9.3
Customs Duties

1. No Party may impose customs duties on electronic transmissions, including content transmitted electronically between a person of a Party and a person of the other Party.
2. For greater certainty, nothing in paragraph 1 shall preclude a Party from imposing internal taxes, fees, or other charges on content transmitted electronically, provided that such taxes, fees or charges are imposed in a manner consistent with this Agreement.

Article 9.4
Non-Discriminatory Treatment of Digital Products

1. No Party may accord less favourable treatment to digital products created, produced, published, contracted for, commissioned or first made available on commercial terms in the territory of the other Party, or to digital products of which the author, performer, producer, developer, or owner is a person of the other Party than it accords to other like digital products.²³
2. The Parties understand that this Article does not apply to subsidies or grants provided by a Party including government-supported loans, guarantees, and insurance.
3. This Article does not apply to any measure affecting broadcasting.

Article 9.5
Domestic Electronic Transactions Framework

1. The Parties shall, to the extent possible, maintain domestic legal frameworks governing electronic transactions consistent with the principles of the UNCITRAL Model Law on Electronic Commerce (1996) or the UN Convention on the Use of Electronic Communications in International Contracts (New York, 2005).
2. The Parties shall endeavour to avoid any unnecessary regulatory burden on electronic transactions.

Article 9.6
Electronic Authentication and Electronic Signatures

1. Except where otherwise provided for in its law, a Party shall not deny the legal validity of a signature solely on the basis that the signature is in electronic form.

²³ For greater certainty, to the extent that a digital product of a non-Party is a “like digital product”, it will qualify as an “other like digital product” for the purposes of this paragraph.

2. No Party may adopt or maintain measures for electronic authentication that would:
 - (a) prohibit parties to an electronic transaction from mutually determining the appropriate authentication methods for that transaction; or
 - (b) prevent parties from having the opportunity to establish before judicial or administrative authorities that their electronic transaction complies with any legal requirements with respect to authentication.
3. Notwithstanding paragraph 2, a Party may require that, for a particular category of transactions, the method of authentication meet certain performance standards or be certified by an authority accredited in accordance with the Party's laws and regulations.

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

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Article 9.7 Personal Data Protection²⁴

1. The Parties recognise the economic and social benefits of protecting the personal data of users of electronic commerce and the contribution that this makes to enhancing consumer confidence in electronic commerce.
2. To this end, each Party shall adopt or maintain a domestic legal framework that provides for the protection of the personal data of users of electronic commerce.
3. The Parties shall publish information on the personal data protections it provides to users of electronic commerce, including:
 - (a) how individuals can pursue remedies; and
 - (b) how business can comply with any legal requirements.

Article 9.8 Paperless Trading

The Parties shall endeavour to:

- (a) make trade administration documents available to the public in electronic form; and
- (b) accept trade administration documents submitted electronically as the legal equivalent of the paper version of those documents.

²⁴ Turkey shall not be obliged to apply paragraphs 2 and 3 of this Article before the date on which Turkey implements its domestic legal framework on protection of personal data.

Article 9.9
Cooperation

Recognising the global and inter-connected nature of electronic commerce, the Parties shall endeavour to:

- (a) work together to assist small and medium enterprises to overcome obstacles encountered in the use of electronic commerce;
- (b) recognise the professional certifications of each other's ICT professional bodies and explore other collaborative efforts in this area; and
- (c) exchange information and share experiences on regulations, policies, enforcement and compliance regarding electronic commerce, including:
 - (i) personal information protection;
 - (ii) security in electronic communications;
 - (iii) authentication; and
 - (iv) e-Government.