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From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
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Subject:	ANNEX to the Recommendation for a Council Decision supplementing the negotiating directives for the Doha Development Agenda regarding the plurilateral negotiations of rules and commitments on electronic commerce

Delegations will find attached document COM(2019) 165 final - ANNEX.

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Brussels, 2.4.2019
COM(2019) 165 final

ANNEX

ANNEX

to the

Recommendation for a Council Decision

**supplementing the negotiating directives for the Doha Development Agenda regarding
the plurilateral negotiations of rules and commitments on electronic commerce**

ANNEX

1. NATURE AND SCOPE OF THE RULES AND COMMITMENTS

1. Based on the existing authorisation by the Council for negotiations in the World Trade Organisation (WTO) under the Doha Development Agenda, the aim of the plurilateral negotiations should be to establish disciplines in the WTO on trade-related aspects of electronic commerce with a view to enhancing global electronic commerce, facilitating the operations of businesses, including micro, small and medium enterprises, in particular, by strengthening consumers' trust in the on-line environment and by creating new opportunities to promote inclusive and sustainable growth and development. The negotiations should also aim to liberalise trade in services and in goods in specific sectors that are directly relevant for enabling electronic commerce.
2. The negotiations should be conducted and concluded with due regard to the rights and obligations of Members under the WTO, respecting the principles of transparency and inclusiveness and building on existing WTO agreements, including the exceptions therein.
3. The negotiations should aim to develop high-standard disciplines and commitments with the participation of the largest possible number of WTO Members. The negotiations should take into account the unique opportunities for, and challenges faced by, WTO Members in relation to electronic commerce. Accordingly, the rules and commitments should provide for appropriate flexibility.
4. The rules and commitments agreed upon by the European Union (EU) should take account of the most-favoured-nation treatment obligation in existing WTO agreements, unless WTO Members can agree otherwise.

2. PROPOSED CONTENT OF THE RULES AND COMMITMENTS

5. The negotiations should develop new disciplines on trade-related aspects of electronic commerce in the WTO. These should aim to improve the conditions for global electronic commerce for the benefit of businesses and consumers in the European Union, and to increase the participation of micro, small and medium enterprises as well as developing and least developed countries in global value chains.
6. The negotiations will be conducted in an open and inclusive manner. Therefore, they may cover any trade-related aspect of electronic commerce that is proposed by the participating Members. Recognising the crosscutting nature of electronic commerce, the negotiations may cover matters such as:
 - facilitation of electronic transactions (e.g. electronic signatures and other trust services, electronic authentication);
 - customs duties on electronic transmissions and the transmitted content;
 - consumer trust (e.g. online consumer protection, unsolicited electronic communications, access to redress);
 - regulatory disciplines on telecommunications services to ensure that there is a level playing field and effective competition in the telecommunications sector;

- cross-border data flows, data localisation requirements and personal data protection;
 - business trust (e.g. protection of computer source code, forced technology transfer);
 - improved access to electronic commerce (e.g. access to the internet, online services and government data or the liability of and access to online intermediaries);
 - trade facilitation measures relevant for electronic commerce (e.g. paperless trading), taking due account of the WTO Agreement on Trade Facilitation;
 - electronic commerce-related aspects of intellectual property rights, including trade secrets;
 - development-related issues;
 - transparency; and
 - cooperation (e.g. between participating Members, consumer protection authorities).
7. The European Union may also engage in negotiations on other trade-related aspects of electronic commerce, proposed by the participating Members, in line with these directives.
 8. The negotiations should also aim at the progressive liberalisation of trade in services and in goods by reducing restrictions to market access and national treatment in certain specific sectors that are directly relevant for enabling electronic commerce, notably telecommunications services and computer and related services, beyond Members' existing WTO commitments.
 9. Any rule or commitment agreed upon by the European Union should be in line with the EU legal framework.
 10. In particular, the European Union shall not agree to disciplines or commitments that could affect its legal framework on cybersecurity, notably on a high common level of security of networks and information systems across the European Union.
 11. Furthermore, the European Union shall not agree to disciplines or commitments that could affect its legal framework on the protection of personal data. On cross-border data flows (data localisation requirements and personal data protection), the European Union shall follow the horizontal approach endorsed in relation to bilateral trade and investment agreements.
 12. Moreover, the European Union and its Member States shall maintain the possibility to preserve and develop their capacity to define and implement cultural and audio-visual policies for the purposes of preserving their cultural diversity. The European Union shall not agree to rules or commitments for audio-visual services. The European Union shall not take commitments on services supplied or activities performed in the exercise of governmental authority.
 13. The rules and commitments should not prevent the European Union, its Member States and their national, regional and local authorities from regulating economic activity in the public interest, to achieve legitimate public policy objectives such as the protection and promotion of public health, social services, public education, safety, the environment, public morals, social or consumer protection, privacy and

personal data protection and the promotion and protection of cultural diversity. The high quality of the public services in the European Union should be preserved in accordance with the Treaty on the Functioning of the European Union, and in particular, with Protocol No. 26 on Services of General Interest, and take into account the European Union's reservations in this area, including pursuant to the GATS.