



# WORLD TRADE ORGANIZATION AGREEMENT ON ELECTRONIC COMMERCE: A UK PERSPECTIVE

On 26 July 2024, the UK and 90 other member countries of the World Trade Organization (WTO) published an advanced draft text of an Agreement on Electronic Commerce (AEC).<sup>1</sup> The AEC will become the first global digital trade agreement when finalised, incorporated into the WTO legal framework and ratified. It follows five years of negotiations under the WTO Joint Statement Initiative on Electronic Commerce (JSI).

<sup>1</sup> World Trade Organization. *Agreement on Electronic Commerce*. Available at: [directdoc.aspx \(wto.org\)](https://directdoc.aspx?wto.org)

This initiative, first launched at the WTO Ministerial Conference in 2017, aims to introduce a set of new rules designed to make global trade faster, fairer, cheaper and more secure.

Once in force, the AEC will ban customs duties on digital content, lower costs for businesses, and help protect consumers from online fraud. The UK Government commented: *“Increased digital trade, with fewer barriers, will lead to more opportunities and less red tape for UK businesses, new employment opportunities and higher wages for workers and increased choice and lower prices for consumers across the UK”*.<sup>2</sup>

As outlined further below, many of the provisions of the AEC already apply in the UK. One of the main purposes of the AEC is to encourage developing countries and least-developed countries (LDCs) to raise their own standards of digital trade regulation to match those in developed countries.

## Background

Global trade is becoming increasingly digital. In 2020, digital trade (i.e. all international trade that is digitally ordered<sup>3</sup> and/or digitally delivered<sup>4</sup>) represented around 25% of global trade, worth around £4 trillion. In 2021, UK exports of digitally delivered services represented around 77% of total UK services exports, amounting to around £252 billion. Both figures are steadily growing.<sup>5</sup>

Until now, a common set of global rules on digital trade has not existed, leading to a fragmented global approach to digital trade regulation and resulting in increased barriers for businesses, workers and consumers. The AEC is a comprehensive, economy-wide

agreement between 91 countries (a majority of the WTO's 164 members) aiming to rectify this fragmentation in digital trade regulation.

The global adoption of digital trade systems (i.e. technology-driven systems that facilitate paperless trade in goods), processes and documents is predicted to increase UK gross domestic product (GDP) by up to £24.2 billion. Although the adoption of digital trade systems under the AEC will not extend to countries outside the JSI, participants in the JSI account for over 90% of global trade,<sup>6</sup> and reports suggest that even partial adoption of digital trade systems would result in a significant boost to UK GDP.<sup>7</sup>

## Scope

The AEC comprises five core elements.

1. Enabling electronic commerce;
2. Openness and electronic commerce;
3. Trust and electronic commerce;
4. Transparency, cooperation and development; and
5. Telecommunications.

The AEC covers goods, services and information, but will not generally apply to government procurement, services supplied in the exercise of governmental authority, or information held or processed by or on behalf of a government (except as indicated below). There are also general exceptions for security, prudential measures, personal data protection and indigenous peoples.

## Enabling Electronic Commerce

### Electronic transactions framework

The AEC encourages parties to adopt or maintain legal frameworks that

treat electronic and paper-based information equally and grant legal recognition to electronic transactions and processes. The agreement also encourages legal use and recognition of electronic transferable records, such as bills of lading, bills of exchange and promissory notes.

These provisions already apply in the UK under the Electronic Trade Documents Act (ETDA) 2023.<sup>8</sup> We published a briefing examining the key features of the ETDA 2023 in July 2023,<sup>9</sup> after publishing a briefing on the draft Bill in April 2022.<sup>10</sup>

## Electronic authentication and electronic signatures

The AEC sets out a commitment that parties shall not deny the legal effect, legal validity, or admissibility as evidence in legal proceedings of an electronic signature solely on the basis that the signature is in electronic form.<sup>11</sup> The agreement also gives companies doing business electronically the freedom to agree appropriate authentication and signature methods for their transactions, facilitates interoperable electronic authentication and encourages cooperation on the mutual recognition of electronic signatures, paving the way for more seamless cross-border trade.

Electronic signatures are already recognised in the UK under the UK eIDAS Regulations, which were originally introduced as an EU Regulation in 2014.<sup>12</sup> We published a briefing on the implications of the EU eIDAS Regulation in November 2016.<sup>13</sup>

## Electronic contracts

The AEC ensures that, as a default, electronic contracts are not denied legal effect, legal validity, or enforceability solely on the basis that the contract has been

2 Department for Business & Trade. *WTO Joint Initiative on E-Commerce guidance*. Available at: [WTO Joint Initiative on E-Commerce guidance - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/publications/wto-joint-initiative-on-e-commerce-guidance)

3 The WTO defines “digitally ordered trade” as: “the international sale or purchase of a good or service, conducted over computer networks by methods specifically designed for the purpose of receiving or placing orders”.

4 The WTO defines “digitally delivered trade” as: “all international trade transactions that are delivered remotely over computer networks”.

5 Ibid.

6 World Trade Organization. *Joint Statement Initiative on E-Commerce: Co-convenors’ Update*. Available at: [ecom\\_14dec20\\_e.pdf \(wto.org\)](https://www.wto.org/ecom/14dec20_e.pdf)

7 Department for Business and Trade. *UK joins groundbreaking global digital trade agreement*. Available at: [UK joins groundbreaking global digital trade agreement - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/news/uk-joins-groundbreaking-global-digital-trade-agreement)

8 Available at: [Electronic Trade Documents Act 2023 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2023/12/section/1)

9 HFW. *Key Features of the UK’s Electronic Trade Documents Act*. Available at: [Key Features of the UK’s Electronic Trade Documents Act - HFW](https://www.hfw.com/insights/publications/key-features-of-the-uks-electronic-trade-documents-act)

10 HFW. *Electronic Trading Documents: Possession is 9/10ths of the Law*. Available at: [Electronic trading documents: possession is 9/10ths of the law - HFW](https://www.hfw.com/insights/publications/electronic-trading-documents-possession-is-9-10ths-of-the-law)

11 “Electronic signature” is defined in the AEC as: “data in electronic form that is in, affixed to, or logically associated with an electronic data message and that may be used to identify the signatory in relation to the data message and indicate the signatory’s approval of the information contained in the data message”.

12 Available at: [Regulation \(EU\) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC \(legislation.gov.uk\)](https://www.legislation.gov.uk/eu/2014/910/regulation/2014/910/1)

13 HFW. *EU Electronic Signature Regulation, November 2016*. Available at: [EU electronic signature regulation, November 2016 - HFW](https://www.hfw.com/insights/publications/eu-electronic-signature-regulation-november-2016)



# “The AEC seeks to create a paperless border environment for trade in goods by encouraging parties to eliminate paper forms and documents and transition towards using forms and documents in data-based formats.”

made by electronic means.<sup>14</sup> Any exceptions must be set out in laws or regulations. The aim is to make trade cheaper for businesses, as they will be able to enter into international supply contracts more easily. Electronic contracts should also deliver greater accessibility for workers, facilitating remote and flexible working arrangements, making record-keeping easier and enhancing security protections against tampering.

It is already possible in the UK to form contracts electronically; the standard UK contract law principles of offer, acceptance, consideration (with the exception of Scots law where consideration is not required) and intent to create legal relations apply to electronic contracts. The Electronic Commerce (EC Directive) Regulations 2002 also has specific provisions governing contracts formed over the internet.<sup>15</sup>

## Electronic invoicing

The AEC ensures that, as a default, the legal effect or admissibility as evidence in legal proceedings of an invoice is not denied solely on the basis that the invoice is in electronic form.<sup>16</sup> Any exceptions must be set out in laws or regulations. The AEC also encourages parties to share best practices and cooperate on cross-border interoperability to prevent

country-specific technical standards from becoming a trade barrier.

In England, Wales and Northern Ireland, electronic invoices must be used for any invoices addressed to and/or issued by public bodies under the Public Procurement (Electronic Invoices etc.) Regulations 2019.<sup>17</sup> The same requirement applies in Scotland, which has its own public procurement legislation, under the Electronic Invoicing (Public Contracts etc.) Amendment (Scotland) Regulations 2019.<sup>18</sup> However, across the UK, electronic invoicing is not mandatory in B2B (business-to-business) transactions, and companies are free to opt for paper invoicing if they wish. Legislation may be required to ensure the legal effect of electronic invoices in the UK in all scenarios.

## Paperless trading

The AEC seeks to create a paperless border environment for trade in goods by encouraging parties to eliminate paper forms and documents and transition towards using forms and documents in data-based formats. The agreement also sets out a commitment that each party will make available to the public, in electronic format,<sup>19</sup> any form issued or controlled by its customs authority for importation, exportation, or transit of goods

through its territory, and that each party will accept such forms submitted in electronic format as the legal equivalent of paper versions.

The UK Government has made available to the public a repository of electronic forms needed for importation, exportation, or transit of goods through the UK.<sup>20</sup>

## Single windows data exchange and system interoperability

The AEC encourages each party to adopt a single window (i.e. a single entry point) for the electronic submission of documentation or data required for importation, exportation, or transit of goods through its territory. These single windows should allow, where possible, the electronic submission of documentation or data in advance, and parties are encouraged to share best practices and work towards single window harmonisation. The aim is to eliminate duplication in data and documentation requirements, making better use of the available data and simplifying the process for traders moving goods across borders.

The UK Government published a policy paper on the creation of a UK Single Trade Window in 2022, with a view to introducing the service in 2024.<sup>21</sup>

<sup>14</sup> “Electronic contract” is not defined in the AEC, but it is generally understood to mean a legally binding agreement created by electronic means. The AEC does note that: “for greater certainty, an electronic contract includes a contract made by interaction with an automated message system”.

<sup>15</sup> Available at: [The Electronic Commerce \(EC Directive\) Regulations 2002 \(legislation.gov.uk\)](#)

<sup>16</sup> “Electronic invoicing” is defined in the AEC as: “the processing and exchange of an invoice between a seller and a buyer using a structured digital format”.

<sup>17</sup> Available at: [The Public Procurement \(Electronic Invoices etc.\) Regulations 2019 \(legislation.gov.uk\)](#)

<sup>18</sup> Available at: [The Electronic Invoicing \(Public Contracts etc.\) Amendment \(Scotland\) Regulations 2019 \(legislation.gov.uk\)](#)

<sup>19</sup> “Electronic format” is defined in the AEC as: “any format suitable for automated interpretation and electronic processing without human intervention, as well as digitized images or forms”.

<sup>20</sup> HM Revenue & Customs. *Forms for import and export*. Available at: [Forms for import and export - GOV.UK \(www.gov.uk\)](#)

<sup>21</sup> Cabinet Office. *UK Single Trade Window – Policy discussion paper*. Available at: [UK Single Trade Window - Policy discussion paper - GOV.UK \(www.gov.uk\)](#)

## Electronic payments

The AEC notes the rapid growth of electronic payments<sup>22</sup> and asks the parties to recognise:

- a) the benefit of supporting the development of safe and accessible cross-border electronic payments by fostering the adoption and use of internationally accepted standards, promoting interoperability of electronic payments systems, and encouraging useful innovation and competition in electronic payments services;
- b) the importance of enabling the introduction of safe and accessible electronic payment products and services in a timely manner; and
- c) the importance of upholding safe and accessible electronic payments systems through laws and regulations that account for the risks of such systems.

In the UK, there are a number of regulations that promote the safety and accessibility of electronic payments systems, in particular the Payment Services Regulations 2017,<sup>23</sup> which implemented the EU's second Payment Services Directive (PSD2),<sup>24</sup> and the Electronic Money Regulations 2011,<sup>25</sup> which implemented the EU's second Electronic Money Directive (2EMD).<sup>26</sup>

## Openness and Electronic Commerce

### Duty-free digital content

The AEC imposes a ban on customs duties on electronic transmissions between JSI parties, codifying the WTO electronic commerce moratorium that has been in place since 1998.<sup>27</sup> Businesses' digital exports (e.g. software, music and film) will not be subject to tariffs in any of the countries participating in the JSI. To account for the evolving

nature of electronic commerce and digital technology, the AEC requires the parties to review this provision five years after its entry into force, and periodically thereafter.

### Open government data

As an exception to the general rule that the AEC will not apply to information held or processed by or on behalf of a government, the agreement aims to facilitate public access to certain government data.<sup>28</sup> The AEC states that *"facilitating public access to and use of government data fosters economic and social development, competitiveness, and innovation"*.

To that end, the AEC states that to the extent a party chooses to make government data digitally available for public access and use, it shall endeavour to ensure that such data is:

- a) made available in a machine-readable and open format;
- b) searchable and retrievable;
- c) updated in a timely manner;
- d) accompanied by metadata that is based on commonly used formats that allow the user to understand and utilise the data; and
- e) made generally available at no or reasonable cost to the user.

Parties should also ensure that, in respect of any government data they make digitally available for public access and use, they avoid imposing conditions that unduly prevent or restrict the user of such data from: (i) reproducing, redistributing, or republishing the data; (ii) regrouping the data; or (iii) using the data for commercial and non-commercial purposes.

The AEC also encourages parties to cooperate on matters that facilitate and expand public access to and use of government data,

including exchanging information and experiences on practices and policies, to promote the development of electronic commerce and create business opportunities, particularly for micro, small, and medium enterprises (MSMEs).

In addition, the AEC states that the parties recognise the benefit of making certain data held by regional and local governments digitally available for public access and use.

In the UK, under the Freedom of Information Act 2000, public authorities are already required to publish certain information about their activities, and members of the public are entitled to request information from public authorities.<sup>29</sup> Improving accessibility and discoverability of government data is an important aspect of the UK Government's National Data Strategy,<sup>30</sup> published in 2020, and was reiterated in its Data Sharing Governance Framework in 2022.<sup>31</sup>

## Trust and Electronic Commerce

### Online consumer protection

The AEC encourages parties to put in place or maintain measures to proscribe misleading, fraudulent, and deceptive commercial activities that cause harm, or potential harm, to consumers engaged in electronic commerce. The agreement sets out a commitment that each party will adopt or maintain measures that aim to ensure:

- a) that suppliers of goods or services deal fairly and honestly with consumers;
- b) that suppliers of goods or services provide complete, accurate, and transparent information on those goods or services, including any terms and conditions of purchase; and

22 "Electronic payment" is defined in the AEC as: "the payer's transfer of a monetary claim on a person that is acceptable to the payee and made through electronic means, but does not include payment services of central banks involving settlement between financial service suppliers".

23 Available at: [The Payment Services Regulations 2017 \(legislation.gov.uk\)](#)

24 Available at: [Directive - 2015/2366 - EN - Payment Services Directive - EUR-Lex \(europa.eu\)](#)

25 Available at: [The Electronic Money Regulations 2011 \(legislation.gov.uk\)](#)

26 Available at: [Directive - 2009/110 - EN - EUR-Lex \(europa.eu\)](#)

27 "Electronic transmission" is defined in the AEC as: "a transmission made using any electromagnetic means and includes the content of the transmission".

28 "Government data" is defined in the AEC as: "data held by a party's central government, disclosure of which is not restricted under its law and which that party makes digitally available for public access and use".

29 Available at: [Freedom of Information Act 2000 \(legislation.gov.uk\)](#)

30 Department for Digital, Culture, Media & Sport. *National Data Strategy*. Available at: [National Data Strategy - GOV.UK \(www.gov.uk\)](#)

31 Central Digital & Data Office. *Data Sharing Governance Framework*. Available at: [Data Sharing Governance Framework - GOV.UK \(www.gov.uk\)](#)

# “The AEC also encourages parties to promote access to, and awareness of, consumer redress or recourse mechanisms, including for consumers transacting cross-border.”

- c) the safety of goods and, where applicable, services during normal or reasonably foreseeable use.

The AEC also encourages parties to promote access to, and awareness of, consumer redress or recourse mechanisms, including for consumers transacting cross-border.

These protections already exist in the UK under the Electronic Commerce (EC Directive) Regulations 2002,<sup>32</sup> which implemented the EU's Electronic Commerce Directive,<sup>33</sup> as well as through other buying and selling legislation, predominantly the Consumer Rights Act 2015<sup>34</sup> and the Consumer Protection from Unfair Trading Regulations 2008.<sup>35</sup>

## Protection against unsolicited commercial electronic messages

The AEC aims to reduce unsolicited commercial electronic messages that undermine consumer welfare (i.e. spam or junk mail), whether as texts or e-mails, by encouraging each party to put in place or maintain measures to minimise unsolicited commercial electronic messages, e.g. by facilitating the ability of recipients to opt out from receiving such messages, requiring consent prior to receiving commercial messages or other methods.

Each party is also required to ensure that commercial electronic messages are clearly identifiable as such, clearly

disclose on whose behalf they are sent, and contain the necessary information to enable recipients to opt out free of charge at any time.

These protections already exist in the UK under the Privacy and Electronic Communications (EC Directive) Regulations 2003<sup>36</sup> and the Electronic Commerce (EC Directive) Regulations 2002, both originally implementing EU Directives.<sup>37</sup>

## Personal data protection

The AEC encourages each party to adopt or maintain a legal framework that provides for the protection of the personal data (i.e. any information relating to an identified or identifiable natural person) of users of electronic commerce.

Each party is also asked to publish information on the personal data protections it provides to users of electronic commerce, including guidance on how a natural person can pursue remedies and how enterprises can comply with legal requirements.

In the UK and EU these provisions are already reflected in the General Data Protection Regulation (GDPR).<sup>38</sup>

Furthermore, the agreement encourages the exchange of information and compatibility between different data protection regimes, with the hope that

global interaction will ensure higher levels of protection.

## Cybersecurity

The AEC promotes the development of national cybersecurity capability and encourages parties to (i) collaborate to identify and mitigate malicious intrusions or dissemination of malicious code that affect parties' electronic networks; (ii) address cybersecurity incidents in a timely manner; and (iii) share information for awareness and best practices.

Furthermore, to identify and protect against cybersecurity risks, detect cybersecurity events, and respond to and recover from cybersecurity incidents, each party is asked to use risk-based approaches in a consensus-based, transparent, and open manner.

In addition to obligations under the GDPR for controllers and processors to keep personal data secure and for controllers to report personal data breaches to supervisory authorities without undue delay, certain organisations in the UK have additional compliance obligations under the Network and Information Systems (NIS) Regulations 2018, which implemented the EU's 2016 NIS Directive.<sup>39</sup> We published a briefing on the compliance obligations introduced by the NIS Directive in December 2016.<sup>40</sup> The

32 Available at: [The Electronic Commerce \(EC Directive\) Regulations 2002 \(legislation.gov.uk\)](#)

33 Available at: [Directive - 2000/31 - EN - e-commerce directive - EUR-Lex \(europa.eu\)](#)

34 Available at: [Consumer Rights Act 2015 \(legislation.gov.uk\)](#)

35 Available at: [The Consumer Protection from Unfair Trading Regulations 2008 \(legislation.gov.uk\)](#)

36 Available at: [The Privacy and Electronic Communications \(EC Directive\) Regulations 2003 \(legislation.gov.uk\)](#)

37 Available at: [The Electronic Commerce \(EC Directive\) Regulations 2002 \(legislation.gov.uk\)](#)

38 UK GDPR available at: [Regulation \(EU\) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data \(United Kingdom General Data Protection Regulation\)\(Text with EEA relevance\) \(legislation.gov.uk\)](#); EU GDPR available at: [Regulation - 2016/679 - EN - gdpr - EUR-Lex \(europa.eu\)](#)

39 Available at: [The Network and Information Systems Regulations 2018 \(legislation.gov.uk\)](#)

40 HFW. *Cyber security – time to change the locks? December 2016*. Available at: [Cyber security – time to change the locks? December 2016 - HFW](#)

NIS Regulations 2018 use a risk-based approach and cover areas such as mandatory notification of incidents, information-sharing and powers of inspection. The NIS Regulations 2018 apply to two groups of organisations: operators of essential services (i.e. electricity, oil and gas, transport, healthcare and other critical infrastructure) and relevant digital service providers (i.e. certain online search engines, online marketplaces, and cloud computing services).

In 2022, the EU introduced further cybersecurity protections in its second NIS Directive (NIS2), but NIS2 does not apply in the UK since its implementation date postdates the Brexit transition period (although, as with other EU legislation, UK businesses that operate within the EU or provide services to EU-based entities will need to be compliant with NIS2, which must be implemented in EU Member States by 17 October 2024). On 30 November 2022, in response to NIS2, the UK Government announced that it would update the NIS Regulations 2018 to include more stringent security measures and bring more organisations in scope.<sup>41</sup>

## Transparency, Cooperation and Development

### Working together on digital trade

The AEC aims to facilitate cooperation in digital trade by encouraging parties to work together to increase inclusion in digital trade (particularly of under-represented groups and MSMEs) and to exchange information and share experiences on laws, regulations, and policies relating to electronic commerce.

## Development

The UK Government notes that, while global digital trade creates opportunities for economic growth and sustainable development, *“making the most out of digital trade may be challenging, especially for developing countries and least-developed countries (LDCs)”*.<sup>42</sup>

The AEC provides a broad commitment to inclusivity by prioritising tangible support and flexibility for participating developing countries and LDCs. The agreement contains a multi-avenue approach to supporting developing countries and LDCs with the implementation of the AEC, through a combination of flexible implementation periods, capacity building and technical assistance.

Under the agreement, the Committee on Trade-Related Aspects of Electronic Commerce will hold at least one dedicated session annually to review progress, discuss issues and facilitate information-sharing under this provision.

## Telecommunications

The AEC requires each party to ensure that its telecommunications regulatory authority (i) does not hold a financial interest or maintain an operating or management role in a supplier of public telecommunications networks and services; (ii) has the power to carry out the functions assigned to it by law, including the ability to impose sanctions; and (iii) exercises such power transparently and in a timely manner. Each party is also required to make publicly available, in an easily accessible and clear form, the functions carried out by its telecommunications regulatory authority.

In addition, the AEC encourages parties to carry out a process of assigning frequencies in an open, transparent and non-discriminatory way for all users, relying on market-based approaches, to promote competition and provide greater choice to businesses, workers and consumers.

The UK Government and the UK telecommunications regulatory authority (Ofcom) already fulfil the above requirements.

## Next steps

The AEC will be periodically reviewed to ensure that it is kept up to date and relevant against the backdrop of a rapidly changing technological environment. There will also be a second phase of negotiations to discuss issues such as international data flows and intellectual property of software or encryption technology. The UK Government will then work with the other JSI participants to finalise the text of the AEC and incorporate it into the WTO legal framework, following which UK ratification will formally take place.

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<sup>41</sup> Department for Digital, Culture, Media & Sport. *Cyber laws updated to boost UK's resilience against online attacks* - GOV.UK ([www.gov.uk](https://www.gov.uk))

<sup>42</sup> Department for Business & Trade. *WTO Joint Initiative on E-Commerce guidance*. Available at: *WTO Joint Initiative on E-Commerce guidance* - GOV.UK ([www.gov.uk](https://www.gov.uk))

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