

## ETUC position on the plurilateral negotiations on e-commerce

Adopted at the Executive Committee Meeting of 9-10 March 2020

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### Introduction

Digital technological developments have a great impact on many aspects of the world of work and on our societies. New technologies should benefit the interest of citizens, workers and consumers, and not of a few, big multinational companies. ETUC and its member organizations, jointly with the global trade union movement, calls on the EU and national governments for a just transition towards a digital economy. It should aim at protecting and promoting citizens' rights, establishing democratic governance of data, shaping the future of work impacted by the digital economy by strengthening workers' and trade union rights, protecting working conditions, promoting the participation of all countries in sharing the benefits of digitalisation and reducing the digital gap between developed and developing countries.

For these reasons, the ETUC expresses deep concerns regarding the ongoing plurilateral negotiations to put in place global rules on e-commerce.<sup>1</sup> For the World Trade Organisation (WTO), the term 'electronic commerce' means "the production, distribution, marketing, sale or delivery of goods and services by electronic means".<sup>2</sup> As cross-border trade makes substantial use of electronic means, the negotiations cover almost the entire field of trade in goods and services. E-commerce should be seen in more broader terms than merely a business model, and the ongoing negotiations go way beyond buying goods and services on the internet. The negotiations encompass sensitive data governance areas such as unrestricted cross-border data and finance flows, removal of governments' right to localise data within their borders, removal of the demand of foreign investors to allow technology transfer through e.g. the hiring of local managers and the use of local suppliers, removal of the obligation to disclose source codes, and public service provision. Therefore, they risk undermining governments' ability to regulate in the public interest as they see fit and to enforce existing regulation in order to ensure that workers' rights, related to non-discrimination and privacy rights, are respected. Furthermore, the foreseeable impact of digitalisation on the global supply chains of manufacturing industries, transport and logistics will broaden the boundaries of e-commerce even further.

### ETUC position in a nutshell

ETUC calls on the EU and its member states to freeze the plurilateral negotiations on e-commerce. The EU should launch a comprehensive public consultation and assessment of the broader dimension of digitalisation, with full and transparent involvement of social partners. Any talks on e-commerce at governmental level must take into account human and trade union rights, solidarity, and social justice, and not be driven by the interests of a few big multinational corporations.

Moreover, ETUC has severe reservations about the WTO as the forum to negotiate data governance issues and shape the rules of the digital change, as the organization lacks expertise, mandate, does not involve trade unions adequately and has a reductive approach to rules-making. ETUC is of the opinion that the WTO needs to cooperate

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<sup>1</sup> *The European Union and 48 other members of the WTO, decided in January 2019 to launch negotiations, which started in April 2019. The EU has tabled initial negotiating proposals in the WTO. These were discussed, along with proposals from other participating WTO members, during the first round of formal discussions on 13-15 May 2019. Since then, negotiating rounds have continued on a regular basis in Geneva with assistance from the WTO secretariat.*

<sup>2</sup> [https://www.wto.org/english/tratop\\_e/ecom\\_e/ecom\\_e.htm](https://www.wto.org/english/tratop_e/ecom_e/ecom_e.htm)

closer with ILO and to include international labour standards in its trade agenda and mandate in order to promote sustainable development, social justice and decent work.<sup>3</sup>

ETUC criticises the fact that the plurilateral negotiations are conducted without full transparency and public access to all tabled proposals by parties. ETUC also deplores the lack of comprehensive impact assessments, including an official and independent Sustainability Impact Assessment (SIA) by the EU after a democratic debate on its terms of references and on its methodology. The negotiations started without risk assessments on their impact on decent work, on the e-commerce carbon footprint and on policy space for public interest regulations, such as data protection or measures to fight tax avoidance and tax evasion.

A precondition for any negotiation on e-commerce should be the inclusion of an effective sustainable development chapter. The EU should also ensure the involvement of EU social partners, including in the affected sectors, in the process of negotiations.

There shouldn't be an agreement on global rules for e-commerce without including full respect of democracy, transparency, public policies, workers' rights, sustainability and fair taxation, as outlined in this position.

### **Safeguarding democracy and public policies**

The e-commerce debate in the context of the WTO and beyond, is closely linked to major changes in the world of work due to digitalisation, and how it affects democracy and public policies. ETUC has stated<sup>4</sup> that digitalisation must not lead only to a boost in the wellbeing of a powerful few. It needs to be steered by public policy and requires new systems of democratic governance. ETUC affirms that new technologies should promote good quality jobs and reduce global inequalities, in order that everyone benefit from technological progress.

ETUC is aligned with ITUC in our belief that the new trade rules currently being tabled in the WTO would place severe restrictions on governments' ability to regulate, enforce existing regulations and enact progressive public policies in the interests of working people. This poses risks to governments' capability to provide quality public services, ensure fundamental employment rights and social justice.<sup>5</sup>

ETUC rejects the automatic capture of so-called "new services" by simply applying technological neutrality to whatever new digital technology is used in supplying a service in the end. With the emergence of e-commerce and the rapid digital developments, this could result in a massive expansion of liberalisation obligations, even beyond what governments have originally foreseen. Instead, it is necessary to safeguard the future policy space necessary to meet the regulatory challenges of the open-ended technological development of digitalisation, also in the area of e-commerce and its underlying future business models.

Access to data is of crucial importance to those who want to affect, or even manipulate, the way we think and act individually, as consumers and as citizens, and collectively. Data inferences and data sets are the results of a growing monitoring and surveillance of citizens and workers alike. The awareness of how this is harming the democratic functioning of important sectors such as media, health and education is growing. The access to private health data is of particular interest for the offensive business interests in further privatisation of the health sector and of big health insurance companies. This

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<sup>3</sup> <https://www.etuc.org/en/document/etuc-position-wto-reform-promote-sustainable-development-social-justice-and-decent-work>

<sup>4</sup> See "ETUC Action Programme 2019-2023" <https://www.etuc.org/sites/default/files/page/file/2019-06/20190621%20Action%20Programme.pdf> and "ETUC resolution on digitalisation : towards fair digital work" <https://www.etuc.org/en/document/etuc-resolution-digitalisation-towards-fair-digital-work>

<sup>5</sup> <https://www.ituc-csi.org/WTO-public-forum-2018-workers-agenda-for-e-commerce>

threat to our democracy will be even harder to defeat with a power asymmetry formed between those with and without access to and control over large amounts of data and the risk of deregulating the access to source codes and algorithms through the ongoing e-commerce negotiations. The ability to regulate digital multinational companies and to preserve the space for public data access and control must instead be sustained and further developed.

Any negotiation on e-commerce must address the need and ability for governments and public authorities to act in the public interest. This includes access to source codes in specific situations (e.g. in judicial cases when there is a presumption of infringements on legislation), guaranteeing storage in such a way that data remain accessible for government authorities, in well-defined cases, requiring the provision of a copy of the financial data, in order to preserve their ability to control and ensure compliance, by the digital operators, with existing tax and social legislation.

### **Protecting workers' rights**

ETUC believes that data governance, the regulation of digital sectors and the well-management of the impact of digital economy on all workers must first take place through domestic and EU legislation, and in dialogue with social partners through collective bargaining. Workers' protection and rights in a more digitalised world also need to be further safeguarded by the ILO. This is the only way to ensure that adequate measures are in place to protect workers.

Workers around the globe are already having their data used by companies as a means of control. Data on areas such as health, education, age, work rate and shift patterns are used to control and discriminate amongst certain workers, and sometimes this happens by bypassing and disregarding existing legislation to protect workers' privacy. If workers are less able to control the use of their data – and challenge the way companies use it – companies' power over workers, including their privacy, will be further strengthened.

Furthermore, the ongoing e-commerce negotiations could risk leading to consolidating unfair competition practices by allowing digital companies to escape social and fiscal legislation to which companies outside the digital economy are subject. This could for example lead to two categories of workers and rights for the same type of occupation in the same segment of the economy – the least protected category of the digital economy causing social dumping.

These behaviours must be stopped and can only be stopped by a genuine, transparent multilateral approach to the definition of new global rules, as proposed by the Centenary Commission of the ILO in its final report, promoting an international level playing field. The EU should take a leading role on this issue.

ETUC is of the opinion that the regulatory policies in the area of e-commerce must contribute to strengthen and not weaken the social level playing field. The EU should demand that any negotiation on global e-commerce rules need to support the enforceability of ILO standards through strong and effective procedures, not encourage business models leading to a race to the bottom on workers' rights and working conditions. Negotiations must also involve trade unions to ensure rules on e-commerce protect and promote workers' interests and promote social goals. ETUC demands effective protection of workers' rights as well as effective international cooperation mechanisms against social dumping through cross-border e-commerce. The EU should therefore take the lead in the definition of new ILO universal labour standards aimed at making decent work a reality in the world of work impacted by new digital business models.

## **Less corporate power, more sustainability**

Data is often referred to as “the oil of the 21st century”. It is a means through which Global Value Chains are organized, products manufactured, and services delivered. Access to and control over data is therefore becoming a key enabler for cross-border trade.<sup>6</sup>

Unfortunately, the current digital environment is dominated by a handful of giant and powerful digital multinational companies that are strengthening market dominance by using aggressive business models, including squeezing out smaller competitors, paying very little tax and undercutting workers’ rights and pay globally. Trade unions are concerned that these multinationals have been to date unduly influential in the e-commerce negotiations, posing a threat to data privacy and democratic data governance, fair competition, workers’ rights, standards and public services and therefore sustainability and democracy as such. Lifting trade barriers will strengthen the dominant positions of the digital multinationals even more, with potential economic and social adverse effects.

The plurilateral e-commerce negotiations could further facilitate commodification of data at the expense of perceiving data in connection with human rights, workers’ rights and democracy. The size of some companies and their enormous share in data access and control are already creating problems in terms of labour-capital balance and fair and sustainable competition. There is therefore a risk that big players will increasingly dominate, leaving smaller businesses and their workers behind. There is also a risk that the e-commerce negotiations would accelerate the global inequalities and drive down pay and conditions for workers. The dominance of the big tech companies and the corporate capture of e-commerce negotiations must not undermine the policy space and fiscal capacities for the development of a local digital economy. Moreover, the concentration of digital tech companies in the US and China creates problems for the national security and local control in other regions, including the EU.

While many Global South countries are not directly involved in these negotiations, trade unions are concerned they would lead to WTO rules that Global South countries will be forced to follow despite the negative impact described in this position. Many countries struggle to access basic infrastructures such as the Internet. ETUC requests concrete solutions to address the digital divide and poor infrastructure, which still poses a big barrier for countries’ ability to engage in e-commerce. For instance, across Africa, only one in four people have access to the internet. In Least Developed Countries (LDCs), it is less than one in ten. The digital divide is not only between developed and developing countries, but also between men and women, rural and urban areas, small and large firms. This divide could put all these economic actors at a clear disadvantage in an economy that is increasingly digital.

There is a need to prioritize the sustainable development dimension of e-commerce. The interests of workers and citizens in both developed and developing countries and LDCs should be at the heart of any path forward on the future of rulemaking in e-commerce. Governments – particularly those in the Global South – must be guaranteed appropriate policy space to pursue active industrial policies contributing the Sustainable Development Goals (SDG), in particular on decent work and reducing inequalities. Any e-commerce negotiation should respect and promote the UN SDGs as well as the Paris Agreement on climate change.

## **Fair taxation**

A considerable amount of digital trade today has little link with the real economy but arises from aggressive tax avoidance strategies. As digital companies rely heavily on intangibles (algorithms, software, data), their profits can be easily shifted from higher tax

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<sup>6</sup> *"Digital Trade: Developing a Framework for Analysis"*, (2017), OECD Trade Policy Papers

jurisdictions to tax havens. It is estimated that tax avoidance diverts 40% of foreign profits to tax havens<sup>7</sup>. As an illustration, it is now established that tax dodging drives nearly 40% of foreign investment globally.<sup>8</sup>

Corporate tax revenues are an indispensable part of a fair and inclusive tax system, enabling governments to invest in sustainable development. Furthermore, consumers and workers should not bear the burden of insufficient corporate revenue. Discussions are currently taking place at the OECD. ETUC laments<sup>9</sup> the orientation taken so far, especially if compared with the Common Corporate Tax Base and the Common Consolidated Corporate Tax proposals together with the European Parliament reports<sup>10</sup>, complemented with 25% minimum corporate tax rate as defended by the ETUC.

Trade negotiations must not prohibit or impede governments from taking all necessary steps to fight tax avoidance. Before any agreement on e-commerce can be concluded, a multilateral agreement on fair taxation of digital companies must be concluded. Taxes should be paid in the country where the real activity of a digital company takes place.

### **Digital sovereignty**

In a digital economy, data is also one of the key production factors for industry. Connected and autonomous vehicles, smart energy grids and “internet of things”, are examples of strategic value chains that rely on access to data. Moreover, secured data spaces, to collect, transfer, store and process data, is crucial for industrial sectors such as manufacturing, logistics, energy and building.

Building a European industrial data space will be of the utmost strategic importance for Europe’s digital sovereignty as well as for the future of its key industrial sectors.

Negotiations on e-commerce should not prevent the EU to set up this fundamental aspect of a future-oriented industrial policy and must not hamper governments’ ability to regulate the digital economy.

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<sup>7</sup> See T. R. Tørsløv, L. S. Wier & G. Zucman (2018b), “The missing profits of nations”, Working Paper 24701, National Bureau of Economic Research.

<sup>8</sup> [“The rise of Phantom investments”, IMF, September 2019](#)

<sup>9</sup> ETUC Draft position, *International corporate taxation - A European view, to be discussed at the 9-10 March 2020 Executive Committee.*

<sup>10</sup> *European Parliament legislative resolution of 15 March 2018 on the proposal for a Council directive on a Common Corporate Tax Base (COM(2016)0685 – C8-0472/2016 – 2016/0337(CNS)) and European Parliament legislative resolution of 15 March 2018 on the proposal for a Council directive on a Common Consolidated Corporate Tax Base (CCCTB) (COM(2016)0683 – C8-0471/2016 – 2016/0336(CNS)).*