

E-commerce Policy continue to remain stuck over personal Data Protection Law clearance

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Changes in foreign direct investment policy for so-called e- marketplaces that came into effect on February 1 have already caused disruptions for the two largest online retailers — Amazon India, the Indian unit of Amazon.com, and Flipkart, owned by Walmart Stores.

[Drafts of both the e-commerce policy](#) and [the Personal Data Protection Bill, 2018](#) are ready and in their respective ministries, awaiting a political green light, three officials from three different ministries said on condition of anonymity.

[The e-commerce policy](#) is contingent upon the personal data protection policy, which will specify the nature of sensitive data that cannot be hosted in overseas servers, and lay down measures to protect personal details of customers, according to the officials.

Email queries sent to the Ministry of Commerce and Industry, the Ministry of law and the Ministry of electronics and information technology (MeitY) on Tuesday did not elicit any responses.

While MCI is responsible for the e-commerce regulations, MeitY is responsible for the personal data protection legislation.

According to the officials cited above, the government is apprehensive of the timing as the policies cannot please both foreign investors and local traders. It is cautious and evaluating various options, one of the officials said.

Key reasons for putting a [comprehensive e-commerce policy](#) in place include regulation of access to data that is one of the main elements for the success of an enterprise in the digital economy;

protection of consumers ; promotion of domestic manufacturers; to check the misuse of dominant position by local or global online retailers; and provision of a legal framework , the first official added.

The e-commerce policy should be aligned with the data protection law, particularly for personally identifiable data, said Arun Prabhu , a partner at law firm Cyril Amarchand Mangaldas. A draft policy gave a reference to data as the oil of the digital economy and, in 2018, proposed a requirement for hard localisation whereby all data generated by users from various sources including e-commerce platforms, social media and search engines had to be stored only in India, he said. A draft of the [Data Protection Bill, 2018](#), however, proposed hard localisation only for critical personal information, something that is yet to be defined, he said.

To protect the interests of domestic retailers, the government recently restricted foreign e-commerce marketplaces from selling products of companies in which they had a stake and prohibited them from forging any exclusive arrangement with vendors. While the move was welcomed by about 70 million domestic traders and small shopkeepers, it invited severe criticisms from global investors and multinational companies.

The Swadeshi Jagaran Manch (SJM), an economic affiliate of the Rashtriya Swayamsewak Sangh (RSS), is confident that the government will not succumb to international pressure. "I have faith that the government will protect the interests of the 7 crore domestic traders. I can say this about the BJP government with some confidence," said Ashwani Mahajan, national co-convenor of the SJM. The BJP is the political offshoot of the RSS.

Mahajan said the proposed e-commerce policy cannot contradict the foreign direct investment (FDI) policy on online trade, which was recently clarified and enforced from February 1. "Take it from me -- no government can make any policy which is good for a few and detrimental for the masses. If this happens, there will be severe political repercussions, whether election or no election."

Confederation of All India Traders (CAIT) national secretary general Praveen Khandelwal said: "The proposed e-commerce policy is in the favour of 7 crore (70 million) local traders and 30 crore (300 million) people whose livelihood is dependent on that. We are expecting the government to announce it (e-commerce policy) before February 25."

EY India partner and national leader, e-commerce and consumer internet, Ankur Pahwa said, "Data privacy is an important global subject that all companies need to consider seriously and stringently comply with".

"Considering the vast user data available with various e-commerce companies ranging from financial to health, personal preferences etc., it is important that there are regulations in place to maintain checks and balances. Aspects such as storage of user data to be maintained in India,

national encryption policy, centralised e-commerce regulator, two-factor authentication for payments, Internet of Things (IoT) regulations, restriction on data portability, data sharing are critical aspects under discussion in the policy,” he added.

Some of these aspects will have an impact e-commerce companies, given the data storage infrastructure is not very well developed in India and may turn out to be an expensive exercise to carry out, he said.

Another important aspect under consideration is providing the government access to user data; the data protection bill will define the extent to which the state can use data without consent (of users). This issue continues to be a red flag for privacy advocates, he added.

The process of framing an e-commerce policy started in 2013-14 through a discussion paper prepared by the erstwhile Department of Industrial Policy & Promotion, now renamed the Department for Promotion of Industry and Internal trade.

Later, a think tank was constituted on the Internet of Things by the department of commerce for preparing recommendations for India’s national policy on e-commerce. The first meeting of the think tank was held on April 24, 2018. Based on its recommendations, the department of commerce formulated a draft policy document, “[Electronic Commerce in India: Draft National Policy Framework.](#)” after consulting various stakeholders in July last year.

Minister of state for commerce and industry CR Chaudhary told the Lok Sabha on December 24 that the Economic Survey 2017-18 estimated the e-commerce market in India at \$33 billion.
Source [Link](#)