

Charles Michel
President
European Council,
175, rue de la loi
BE – 1048 – Brussels

Ursula von der Leyen
President
European Commission,
200, rue de la loi
BE – 1049 – Brussels

Fumio Kishida
Prime Minister of Japan
Cabinet Secretariat
Government of Japan
1-6-1 Nagata-cho, Chiyoda-ku
Tokyo 100-8968
Japan

Brussels, 9 May 2022

Subject: ESF Call for adoption of cross-border data flows provisions in EU-Japan EPA

Dear President Michel,
Dear President von der Leyen,
Dear Prime Minister Kishida,

The European Services Forum (ESF) is the European private sector organisation that represents the interests of the European services industries in international trade and investment negotiations. It comprises major European service businesses and European service sector federations covering service sectors including (but not limited to) financial services, telecommunications and IT services, maritime transport, postal and express delivery services, business and professional services, construction, distribution, and audio-visual services. All these sectors are active in digital trade.

The EU-Japan Economic Partnership Agreement (EPA) entered into force in February 2019. Since February 2019, international circumstances around the global digitalisation of the economy have evolved significantly for both the European Union and Japan, creating both urgency and opportunity for both countries to negotiate an improved framework for data localisation and cross-border data transfers in the context of the EU-Japan EPA.

Section F of Chapter 8 of the agreement deals with Electronic Commerce. We would like to draw your attention on the fact that Article 8.81 on Free Flow of Data states that “The Parties shall reassess within three years of the date of entry into force of this Agreement the need for inclusion of provisions on the free flow of data into this Agreement”. The three years commitment therefore came to an end in February 2022. The European Services Forum sees the compliance with this commitment as a very high priority.

ESF is keen to see the European Union engaged into the drafting of global and forward-looking rules on digital trade. Discussions are going on in the WTO in the framework of the Joint Statement Initiative (JSI) on E-Commerce. Progress was made and we hope that at the forthcoming 12th Ministerial Conference in 2022 the ministers of the 86 parties will issue a Ministerial Declaration to encourage further progress. However, no discussion started yet on the substantial issue of cross-border data flows, and there is no guarantee that it will take place any soon given the difficult international context.

Based on its leadership of the Data Free Flow with Trust initiative, and its shared respect for the importance of digital trust, Japan is well placed to work with the EU in revisiting Article 8.81 of the EU-Japan EPA. We see Japan as one of the countries where in-depth discussions on critical issues like data localisation, banning access to code source, and better data protection rules should take place.

If the EU and Japan still want to be relevant in the area of drafting global rules for the digital economy, they need to engage in this field. We are aware that in-depth technical discussions with the two respective administrations took place end of last year and beginning of this year so as to find acceptable language and guarantees that both parties could accept on both data flows and data protection. We understand that unfortunately these discussions have now ended, and that the EU side considers that there are not yet sufficient guarantees to ensure a strong protection of the EU citizens' data. We note that in 2019, EU and Japan agreed on mutually adequacy decisions on data protection, and they were confirmed at the first review few months ago in October 2021. We would like therefore to express our disappointment. If EU and Japan cannot agree on coming language on data flow and data protection, it will be difficult to ensure progress in the discussions on cross border data flows during the JSI negotiations.

The European Services Forum calls both parties to urgently resume the discussions to find a compromise before the forthcoming EU-Japan Leaders' Summit that is scheduled to take place in May. If such a compromise is not found by then, ESF calls upon you to take the opportunity of the Leaders' Summit to provide the necessary political impetus to achieve such a compromise. Then, ESF urges the Commission to recommend to the EU Council to get a mandate to negotiate new articles on cross-border data flows and data protection and move on to finalise the revision of the EU-Japan EPA accordingly.

Furthermore, we welcome the announcement in the recent "EU strategy for cooperation in the Indo-Pacific¹" that the EU proposes to explore the launch of negotiations of Digital Partnership Agreements (DPA) with Japan. We understand that such DPA will tackle many other issues, like a cooperation roadmap for expanding cooperation on 6G, standardisation, Artificial Intelligence, block chain, and quantum technology or cyber security, as well as to cooperate towards more resilient supply chains for semiconductors, and to explore cooperation on innovation in advanced semiconductors. All these issues are interesting and important, and ESF fully supports such work. However, we understand that these discussions do not intend to lead to any bidding commitments, and hence do not include disciplines in the field of international digital trade.

We remain at your disposal for any further information on this matter.

Yours sincerely,



Annette Meijer
ESF Chair

Cc: *Valdis Dombrovskis, Executive Vice President of the European Commission*
Koichi Hagiuda, Minister of Economy, Trade and Industry of Japan

¹ [JOIN\(2021\) 24 final - 16.9.2021](#)

List of ESF members supporting the above position

- Amfori
- Apple
- Architects' Council of Europe –ACE
- British Telecom Plc
- BDO
- Bureau International des Producteurs et Intermédiaires d'Assurances – BIPAR
- BUSINESSEUROPE
- BUSINESSEUROPE WTO Working Group
- BSA The Software Alliance – BSA
- Danish Shipping
- Deutsche Post DHL
- DI – Confederation of Danish Industries
- Digital Europe
- EK - Confederation of Finnish Industries
- EuroCommerce
- European Banking Federation - EBF
- European Community Shipowners' Associations – ECSA
- European Express Association – EEA
- European Federation of Engineering and Consultancy Associations – EFCA
- European Public Telecom Network – ETNO
- Fédération de l'Industrie Européenne de la Construction – FIEC
- FratiniVergano European Lawyers
- General Council of the Bar of England & Wales
- Google
- Huawei Europe
- IBM Europe, Middle East & Africa
- Insurance Europe
- Irish Business and Employers' Confederation - IBEC
- Law Society of England & Wales
- Le Groupe La Poste
- Microsoft Corporation Europe
- Mouvement des entreprises de France – MEDEF
- Orange
- PostEurop
- Prudential Plc.
- Svenskt Näringsliv (Confederation of Swedish Enterprise)
- TechUK
- Telenor Group
- TheCityUK
- UPS
- Vodafone
- Zurich Insurance