

Ms. Sabine Weyand
Director General
Directorate General for Trade
European Commission
170, rue de la loi
BE – 1049 – Brussels

Brussels, 20 December 2021

Subject: Revision of the EU-Japan EPA Digital Trade Chapter

Dear Director General,

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 is therefore coming to an end in February 2022. The European Services Forum sees the compliance with this commitment as a very high priority.

As you know, 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.

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.

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, Republic of Korea and Singapore. 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, but apparently do not include the disciplines in the field of international digital trade. If the EU still wants to be relevant in the area of drafting global rules for the digital economy, it needs to engage in this field.

We would like therefore to draw your attention on this need and on this commitment with Japan in the EPA and call upon you to engage with your Japanese counterparts in this respect.

Data protection provisions in trade agreements are one of the issues that needs to be tackled to move ahead to ensure a level playing field at international level for companies. The fact that EU and Japan share a mutual data privacy adequacy determination contributes to creating positive political conditions to reach forward-looking and ambitious data flows provisions, including – but not limited to – a commitment to provide and recognize legal data transfer instruments. We encourage the EU to remain actively engaged in discussions with Japan and like-minded countries on “Data Free Flow with Trust” initiatives, at bilateral, plurilateral and multilateral level through the G7 and OECD.

This is a complex political issue, but we are confident that proper negotiations between EU and Japan could lead to acceptable solutions to both parties. If both Parties can move forward, they may also be able to help drive consensus in the WTO JSI e-commerce negotiations and in other contexts.

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

Yours sincerely,



Noel Clehane
ESF Chairman

*Cc: EVP Valdis Dombrovskis Cabinet;
EVP Vestager Cabinet;
Commissioner Breton cabinet;
Commissioner Reynders cabinet;
Adeline Hinderer, Head of Unit, Far East Asia, DG Trade
Christophe Kiener, Head of Unit, Services & Digital Trade, DG Trade
EU Trade Policy Committee – Services & Investment*

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

List of members supporting the above position

- Amfori
- 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
- Conseil des barreaux de la Communauté Européenne – CCBE
- 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
- Institute of Chartered Accountants in England and Wales (ICAEW)
- 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