

EU/Japan Economic Partnership Agreement: free flow of data

2023/0450(NLE) - 31/01/2024 - Legislative proposal

PURPOSE: to conclude, on behalf of the European Union, the Protocol amending the EU-Japan Economic Partnership Agreement on the free movement of data.

PROPOSED ACT: Council Decision.

ROLE OF THE EUROPEAN PARLIAMENT: Council may adopt the act only if Parliament has given its consent to the act.

BACKGROUND: by decision of 12 July 2023, the Council approved negotiating directives for the Commission to negotiate the inclusion of provisions on cross-border data flows in the Agreement between the European Union and Japan for an Economic Partnership.

On 24 October 2022, the EU and Japan launched the negotiations on cross-border data flows. The negotiations were concluded in principle on 28 October 2023.

The Protocol amending the EU-Japan Economic Partnership Agreement as regards the free movement of data was signed subject to its conclusion at a later date. The Protocol should be approved on behalf of the Union.

CONTENT: the Council draft concerns the approval, on behalf of the Union, of the Protocol amending the EU-Japan Economic Partnership Agreement.

Cross-border transfer of information by electronic means

According to the Protocol, the Parties are committed to ensuring the cross-border transfer of information by electronic means where this activity is for the conduct of the business of a covered person. To that end, a Party should not adopt or maintain measures which prohibit or restrict the cross-border transfer of information by:

- requiring the use of computing facilities or network elements in the territory of the Party for information processing, including by requiring the use of computing facilities or network elements that are certified or approved in the territory of the Party;
- requiring the localisation of information in the territory of the Party for storage or processing;
- prohibiting storage or processing of information in the territory of the other Party;
- making the cross-border transfer of information contingent upon use of computing facilities or network elements in the territory of the Party or upon localisation requirements in the territory of the Party;
- prohibiting the transfer of information into the territory of the Party; or
- requiring the approval of the Party prior to the transfer of information to the territory of the other Party.

Protection of Personal Data

The Parties recognise that individuals have a right to the protection of their personal data and privacy as provided for by the laws and regulations of each Party and that high standards in this regard contribute to trust in the digital economy and to the development of trade. Each Party recognises the right of the other Party to determine the appropriate level of the protection of personal data and privacy, to be provided for by their respective measures.

Each Party should: (i) endeavour to adopt measures that protect individuals, without discrimination based on grounds such as nationality or residence, from personal data protection violations occurring within its jurisdiction; (ii) adopt or maintain a legal framework that provides for the protection of personal data related to electronic commerce.

Lastly, the provision concerning financial data is deleted.