

EU/Japan Economic Partnership Agreement: free flow of data

2023/0450(NLE) - 14/05/2024 - Final act

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

NON-LEGISLATIVE ACT: Council Decision (EU) 2024/1303 on the conclusion, on behalf of the Union, of the Protocol amending the Agreement between the European Union and Japan for an Economic Partnership.

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.

CONTENT: under this Decision, the Protocol amending the Agreement between the European Union and Japan for an Economic Partnership is hereby approved on behalf of the Union. This protocol aims to include provisions on cross-border data flows in the agreement between the EU and Japan for an Economic Partnership. It will provide greater legal certainty, ensuring that data flows between the EU and Japan will not be hampered by unjustified data localisation measures, and also ensuring the benefit from the free flow of data according to the EU and Japan's rules on data protection and the digital economy.

In addition, the protocol will enable companies to handle data efficiently without cumbersome administrative or storage requirements, and provide them with a predictable legal framework.

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.

ENTRY INTO FORCE: 29.04.2024.