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LIMITE

POLCOM 109
SERVICES 16
TELECOM 360
DATAPROTECT 249

'I/A' ITEM NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee (Part 2)/Council
No. Cion doc.:	11376/2022 + ADD 1
Subject:	Council Decision authorising the opening of negotiations for the inclusion of provisions on cross-border data flows in the Agreement between the European Union and Japan for an Economic Partnership - Adoption

1. On 13 July 2022, the Commission submitted to the Council a Recommendation for a Council Decision authorising the opening of negotiations for the inclusion of provisions on cross-border data flows in the Agreement between the European Union and Japan for an Economic Partnership¹.
2. The European Data Protection Supervisor was consulted by the Commission in accordance with Article 42(1) of Regulation (EU) 2018/1725 of the European Parliament and of the Council and delivered an opinion on 9 August 2022.
3. The Trade Policy Committee (Experts Services and Investment) discussed the recommendation on 20 July and 7 September. On the basis of a Presidency compromise proposal, the Trade Policy Committee (Experts Services and Investment) endorsed it on 7 September with modifications to take into account a number of necessary adjustments. The related draft negotiating directives were endorsed at the same time.

⁽¹⁾ Doc. 11376/2022 + ADD 1.

4. As regards the question of the publication of the negotiating directives after the adoption by the Council, no delegation raised an objection. The Council should therefore be asked to decide on making the negotiating directives public after their adoption.
5. In the light of the above, and subject to confirmation by the Permanent Representatives' Committee, the Council is invited to:
- adopt the above mentioned Council Decision, as finalised by the legal linguistic experts and set out in document 12259/22²;
 - adopt the addendum to document 12259/22 containing the related negotiating directives;
 - to recommend that the Council make the negotiating directives public after their adoption, on the understanding that this decision does not constitute a precedent for other negotiating directives, and that any decision to release other negotiating directives shall be taken on a case-by-case basis, balancing the need for transparency and the need for a certain level of confidentiality in order to ensure the effectiveness of the negotiations; and
 - note that the European Parliament will be informed in accordance with Article 218(10) TFEU, and that the negotiating directives will be transmitted to the Parliament.

² In view of its nature, this Decision will not be published in the Official Journal of the European Union (cf. Article 17(2)(b) of the Council's Rules of Procedure).