



Council of the  
European Union

Brussels, 20 September 2022  
(OR. en)

12259/22

LIMITE

POLCOM 110  
SERVICES 17  
TELECOM 361  
DATAPROTECT 250

## LEGISLATIVE ACTS AND OTHER INSTRUMENTS

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Subject: COUNCIL DECISION authorising the opening of negotiations with Japan for the inclusion of provisions on cross-border data flows in the Agreement between the European Union and Japan for an Economic Partnership

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**COUNCIL DECISION (EU) 2022/...**

**of ...**

**authorising the opening of negotiations with Japan for the inclusion of provisions on  
cross-border data flows in the Agreement between the European Union and Japan  
for an Economic Partnership**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular  
Article 207(4), first subparagraph, in conjunction with Article 218(3) and (4) thereof,

Having regard to the recommendation from the European Commission,

Whereas:

- (1) Negotiations should be opened with a view to including provisions on cross-border data flows in the Agreement between the European Union and Japan for an Economic Partnership (the ‘Agreement’)<sup>1</sup>.
- (2) Pursuant to Article 8.81 of the Agreement, the Parties are to reassess the need for the inclusion in the Agreement of provisions on the free flow of data.
- (3) The Joint Committee established by Article 22.1 of the Agreement, in its meeting of 25 March 2022, examined whether the economic partnership between the European Union and Japan would benefit from the inclusion of provisions on cross-border data flows in the Agreement. Building on that examination, the representatives of the Union and Japan at the 28th EU-Japan summit, which was held on 12 May 2022, committed to consider opening the negotiations needed for such inclusion.

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<sup>1</sup> OJ L 330, 27.12.2018, p. 3

- (4) The Union and Japan have a deep and dynamic economic relationship and, through their mutual adequacy arrangement, have created the world's largest area of safe transfers of personal data. Japan is the Union's closest strategic partner in the Indo-Pacific region and its second-biggest trading partner in Asia.
- (5) The Union is engaged in negotiations on horizontal rules covering cross-border data flows, both in the context of bilateral negotiations with several third countries and in the context of negotiations on electronic commerce within the World Trade Organization. The provisions of the Agreement should be coherent with those rules. Therefore, it is appropriate to include provisions on cross-border data flows into the Agreement, in order to ensure its cohesion with the horizontal rules covering cross-border data flows and personal data protection agreed in the context of trade negotiations.
- (6) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725 of the European Parliament and of the Council<sup>1</sup> and delivered an opinion on 9 August 2022,

HAS ADOPTED THIS DECISION:

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<sup>1</sup> Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

*Article 1*

1. The Commission is hereby authorised to open negotiations with Japan for the inclusion of provisions on cross-border data flows in the Agreement between the European Union and Japan for an Economic Partnership.
2. The negotiations shall be conducted on the basis of the negotiating directives of the Council set out in the addendum to this Decision.

*Article 2*

The Commission is hereby nominated as the Union negotiator.

*Article 3*

The negotiations shall be conducted in consultation with the Trade Policy Committee – Experts (Services and Investment).

*Article 4*

This Decision is addressed to the Commission.

Done at ...,

*For the Council*

*The President*

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