

Briefing organised by the EU-Japan Centre for Industrial Cooperation

## TURNING THE EU-JAPAN DATA FLOW ‘AGREEMENT IN PRINCIPLE’ INTO A REALITY

Tuesday, 12 December 2023 from 10:30 to 11:30 in Brussels (in-person event)

*(This summary by EUJC secretariat was prepared using the Chatham House Rule)*

The seminar was moderated by Simon Craig Gray (Deputy Director, EU-Japan Centre for Industrial Cooperation) and featured an opening presentation by a European Commission participant and then a Q&A session with two Commission participants responding to questions from the audience.

In the opening statement, the main Commission participant explained that after a year of discussions, the EU and Japan concluded their negotiations on data flows on 28 October. It is a significant development as it bridged EU and Japanese approaches to the cross-border flow of data and has a systemic importance as it comes at a time of increasing fragmentation in the world. The agreement could be seen as a building block for DFFT championed by Japan and the G7 and an alternative to protectionist models.

Trade rules on data flows complement the EPA as data flows are key enablers of digital economies and digital trade and of supply chains and business models and are key to economic growth, innovation and connecting people. The EU believes that the rules should respect the EU’s democratic values and be consistent with our digital and data policies. On ‘values’ and ‘regulatory oversight’ the EU and Japan’s visions converge. Both sides want to send a strong signal opposing growing unjustified restrictions.

What has been agreed? Ambitious rules on cross-border data flows with trust that respect the EU’s approach based on a ‘comprehensive and granular list of prohibited measures’ that unjustifiably restrict outgoing and incoming data flows. This list includes elements based on identified problematic practices across jurisdictions.

On regulatory oversight, the agreement has two key exceptions: on privacy and ensuring a legitimate policy space for implementation and enforcement of digital and data legislation. These exceptions are well-defined and circumscribed including in footnotes contained in the [Annex to the protocol](#).

What does this mean for business? An [Adequacy Agreement](#) covers the free flow of personal data, but does not cover everything (e.g., it does not cover industrial data or non-privacy-related restrictions). These additional rules provide legal certainty and an ‘insurance policy’ to prevent new restrictions from appearing. By being part of the EPA they benefit from the EPA’s institutional framework that will give a platform for addressing any potential future concerns that may arise. Moreover, they provide a useful precedence for dealing with other jurisdictions where problems of localisation and other forms of unjustified restrictions may be more present.

What must happen for the agreement to enter into force? the Council needs to approve the Protocol and the European Parliament has to give its consent. The Japanese Diet will also need to give its approval. The Commission hopes that both sides will be able to complete their approval processes before the end of the current European Parliament term in June 2024.

During the Q&A part of the briefing, topics covered included:

- *Whether the agreement could form the basis for future data transfer rules with China.*
- *Which restrictions are key concerns between the EU and Japan and does the Commission expect the 'legitimate public policy objective' exception to be used often?*
- *What impact will the new rules have on the flow of health-related data and how easy was it to agree rules when the EU health data space is not yet a reality?*
- *How is this agreement more advanced than what the EU has agreed with New Zealand?*
- *Can you give concrete examples of the two new restrictions?*
- *What guidance will you give businesses about how to comply with the new rules?*
- *How the agreement will interact with industrial data – Japanese battery manufacturers, for example, will have to meet separate EU and Japanese battery rules – could this agreement not provide more cohesion about how to share data between the EU and Japan on batteries?*

