

**Disclaimer:** The negotiations between the EU and Japan on the Economic Partnership Agreement (the EPA) have been finalised. In view of the Commission's transparency policy, we are hereby publishing the texts of the EPA. The texts are published for information purposes only and may undergo further modifications following the process of legal revision.

The texts will be finalised upon signature and become binding upon the Parties under international law only after completion by each Party of its internal legal procedures necessary for the entry into force of the Agreement.

## SECTION A GENERAL PROVISIONS

### *Article 1*

#### *Objectives, coverage and definitions*

1. The Parties, reaffirming their respective commitments under the WTO Agreement and their commitment to create a better climate for the development of trade and investment between the Parties, hereby lay down the necessary arrangements for the progressive and reciprocal liberalisation of trade in services and investment and for cooperation on e-commerce.
2. For the purpose of this Chapter, the Parties reaffirm their right to adopt within their territories regulatory measures necessary to achieve legitimate policy objectives, such as the protection of public health, safety, the environment or public morals, social or consumer protection or the promotion and protection of cultural diversity.
3. This Chapter shall not apply to measures affecting natural persons of a Party seeking access to the employment market of the other Party, nor to measures regarding nationality or citizenship, residence or employment on a permanent basis.
4. This Chapter shall not prevent a Party from applying measures to regulate the entry of natural persons into, or their temporary stay in, the Party, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to the other Party under the terms of this Chapter. The sole fact of requiring a visa for natural persons of a certain country and not for those of others shall not be regarded as nullifying or impairing benefits under the terms of this Chapter.

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5. For the purpose of this Chapter:

(a) “aircraft repair and maintenance services during which an aircraft is withdrawn from service” mean such activities when undertaken on an aircraft or a part thereof while it is withdrawn from services and does not include so-called line maintenance;

(c) “computer reservation system (CRS) services” mean services provided by computerized systems that contain information about air carriers’ schedules, availability, fares and fare rules, through which reservations can be made or tickets may be issued

(d) “Covered enterprise” means an enterprise in the territory of a Party established within the meaning of paragraph (i), directly or indirectly, by an entrepreneur of the other Party, before or after the date of entry into force of this agreement, in accordance with the applicable law .

(e) “cross-border trade in services” means the supply of a service:

(i) from the territory of a Party into the territory of the other Party;

(ii) in the territory of a Party to the service consumer of the other Party;

(f) “direct taxes” comprises all taxes on total income, on total capital or on elements of income or of capital, including taxes on gains from the alienation of property, taxes on estates, inheritances and gifts, and taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation;

(g) ‘economic activity’ means any service or activity of an industrial, commercial or professional character or activities of craftsmen, except for services or activities performed in the exercise of governmental authority;

(h) an ‘enterprise’ means a juridical person or branch or representative office;

(i) “establishment” means the setting up or the acquisition of a juridical person, including through capital participation, or the creation of a branch or representative office in Japan or in the EU respectively<sup>1</sup>, with a view to establishing or maintaining lasting economic links.

(j) “existing” means in effect on the date of entry into force of this Agreement;

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<sup>1</sup> Expansion is understood by the Parties as being covered through the definition of establishment in the form of establishment by a covered enterprise.’

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(l) “ground handling services” means the supply at an airport, on a fee or contract basis, of the following services: airline representation, administration and supervision; passenger handling; baggage handling; ramp services; catering, except the preparation of the food; air cargo and mail handling; fuelling of an aircraft; aircraft servicing and cleaning; surface transport; and flight operations, crew administration and flight planning. Ground handling services do not include: self-handling; security; line maintenance; aircraft repair and maintenance; or management or operation of essential centralised airport infrastructure, such as de-icing facilities, fuel distribution systems, baggage handling systems and fixed intra-airport transport systems;

(n) “entrepreneur of a Party” means:

- (i) a natural person of a Party; or
- (ii) a juridical person of a Party

that seeks to establish, is establishing or has established in the territory of the other Party within the meaning of paragraph (i);

(o) ‘juridical person’ means any legal entity duly constituted or otherwise organised under applicable law, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association;

(o1) a juridical person is:

- (i) ‘owned’ by natural or juridical persons of a Party if more than 50 percent of the equity interest in it is beneficially owned by natural or juridical persons of that Party;
- (ii) ‘controlled’ by natural or juridical persons of a Party if such natural or juridical persons have the power to name a majority of its directors or otherwise to legally direct its actions;

(p) a ‘juridical person of the EU’ or a ‘juridical person of Japan’ means a juridical person constituted or organised under the laws of a Member State of the EU or of Japan and engaged in substantive business operations<sup>2</sup> in the territory of the EU or of Japan, respectively;

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<sup>2</sup> In line with its notification of the Treaty establishing the European Community to the WTO (WT/REG39/1), the EU understands that the concept of “effective and continuous link” with the economy of a Member State of the European Union enshrined in Article 54 of the TFEU is equivalent to the concept of “substantive business operations”.

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(p1) Notwithstanding the preceding paragraph, shipping companies established outside the EU or Japan and controlled by nationals of a Member State of the EU or of Japan, respectively, shall also be beneficiaries of the provisions of this Chapter if their vessels are registered in accordance with their respective legislation, in that Member State or in Japan and fly the flag of a Member State or of Japan;

(q) a “measure” means any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form<sup>3</sup>;

(r) “measures adopted or maintained by a Party” means measures taken by:

- (i) central, regional or local governments and authorities; and
- (ii) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities;

(s) a “natural person of the EU” means a national of one of the Member States of the EU in accordance with its applicable laws and regulations and a “natural person of Japan” means a national of Japan in accordance with its applicable laws and regulations<sup>4</sup>;

(t) “operation” , means conduct, management, maintenance, use, enjoyment and sale or other form of disposal of an enterprise.

(u) “selling and marketing of air transport services” means opportunities for the air carrier concerned to sell and market freely its air transport services including all aspects of marketing such as market research, advertising and distribution. These activities do not include the pricing of air transport services nor the applicable conditions;

(v) ‘services’ means any service in any sector except services supplied in the exercise of governmental authority;

(w) ‘services supplied or activities performed in the exercise of governmental authority’ means services or activities which are supplied or performed neither on a commercial basis nor in competition with one or more economic operators;

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<sup>3</sup> For greater certainty, the term "measure" includes failure to act.

<sup>4</sup> The definition of natural person also includes natural persons permanently residing in the Republic of Latvia who are not citizens of the Republic of Latvia or any other state but who are entitled, under the laws and regulations of the Republic of Latvia, to receive a non-citizen passport.

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(x) a ‘service supplier’ of a Party means any natural or juridical person of a Party that seeks to supply or supplies a service;

### ***Article 2***

#### ***Specialized Committee on Trade in Services, Investment Liberalization and E-commerce***

1. For the purposes of the effective implementation and operation of this Chapter, the Parties hereby establish a Specialized Committee on Trade in Services, Investment Liberalization and E-commerce (hereinafter referred to in this Article as “the Specialized-Committee”).

2. The functions of the Specialized Committee shall be:

- (a) reviewing and monitoring the implementation and operation of this Chapter and the non-conforming measures set out in each Party’s Schedules in Annexes [X] (Existing Measures) and [Y] (Future Measures);
- (b) exchanging information on any matters related to this Chapter;
- (c) examining possible improvements of this Chapter;
- (d) discussing any issue related to this Chapter as may be agreed upon;
- (e) reporting the findings of the Specialized Committee to the Joint Committee; and
- (f) carrying out other functions as may be delegated by the Joint Committee.

3. The Specialized Committee shall be composed of representatives of the Parties including officials of relevant Ministries or Agencies in charge of the issues to be addressed. The Specialized Committee may invite representatives of relevant entities other than the Governments of the Parties with the necessary expertise relevant to the issues to be addressed.

### ***Article 3***

#### ***Review***

1. Each Party shall endeavour, where appropriate, to reduce or eliminate the non-conforming measures set out in its Schedules in Annexes [X] and [Y] respectively.

2. With a view to introducing possible improvements to the provisions of this Chapter, and consistent with their commitments under international agreements, the Parties shall review their legal framework relating to trade in services, investment liberalization and e-commerce, and the investment environment, including the present Agreement, in accordance with the procedure set out in Article 2 (Specialized Committee on Trade in Services, Investment Liberalization and E-commerce).

**SECTION G EXCEPTIONS**

**Article X1**

**General exceptions**

1. For the purpose of section [Investment Liberalization], Article XX of the GATT 1994 is incorporated into and made part of this Agreement, *mutatis mutandis*. The Parties understand that the measures referred to in Article XX (b) of the GATT 1994 include environmental measures necessary to protect human, animal or plant life or health. The Parties understand that Article XX (g) of the GATT 1994 applies to measures for the conservation of living and non-living exhaustible natural resources.
2. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on establishment or trade in services, nothing in section [Investment Liberalization], section [Cross-border trade in services], section [Entry and temporary stay of natural persons for business purposes], section [Regulatory framework] and section [Electronic commerce] shall be construed to prevent the adoption or enforcement by any Party of measures:
  - (a) necessary to protect public security or public morals or to maintain public order;<sup>5</sup>
  - (b) necessary to protect human, animal or plant life or health;<sup>6</sup>
  - (c) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Chapter including those relating to:
    - (i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on contracts;
    - (ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts;

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<sup>5</sup> The public security and public order exceptions may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society.

<sup>6</sup> The Parties understand that the measures referred to in subparagraph (b) include environmental measures necessary to protect human, animal or plant life or health.

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- (iii) safety;
- (d) inconsistent with Articles 4 paragraph 1 and [X] paragraph 1 on National Treatment, provided that the difference in treatment is aimed at ensuring the effective or equitable imposition or collection of direct taxes in respect of economic activities, entrepreneurs, services or services suppliers of the other Party<sup>7</sup>.

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<sup>7</sup> Measures that are aimed at ensuring the equitable or effective imposition or collection of direct taxes include measures taken by a Party under its taxation system which:

- (i) apply to non-resident entrepreneurs and services suppliers in recognition of the fact that the tax obligation of non-residents is determined with respect to taxable items sourced or located in the Party's territory; or
- (ii) apply to non-residents in order to ensure the imposition or collection of taxes in the Party's territory; or
- (iii) apply to non-residents or residents in order to prevent the avoidance or evasion of taxes, including compliance measures; or
- (iv) apply to consumers of services supplied in or from the territory of another Party in order to ensure the imposition or collection of taxes on such consumers derived from sources in the Party's territory; or
- (v) distinguish entrepreneurs and service suppliers subject to tax on worldwide taxable items from other entrepreneurs and service suppliers, in recognition of the difference in the nature of the tax base between them; or
- (vi) determine, allocate or apportion income, profit, gain, loss, deduction or credit of resident persons or branches, or between related persons or branches of the same person, in order to safeguard the Party's tax base.

Tax terms or concepts in paragraph (f) of this provision and in this footnote are determined according to tax definitions and concepts, or equivalent or similar definitions and concepts, under the domestic law of the Party taking the measure.