

**Disclaimer:** The negotiations between EU and Japan on Economic Partnership Agreement have not been concluded yet. Therefore, the whole texts are also still under negotiations and not finalised. However, in view of the growing public interest in the negotiations, the texts are published at this stage of the negotiations for information purposes. These texts are without prejudice to the final outcome of the agreement between the EU and Japan.

Any such texts should be finalised upon the 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, followed by the final texts being submitted and approved by the legislators.

## Japan-EU Economic Partnership Agreement

### Consolidated Text

**(Status 5 July 2017)**

*Text within brackets is subject to further agreement by the Parties.*

## **Title [X] - TRADE IN SERVICES, INVESTMENT AND E-COMMERCE**

### **CHAPTER VII - EXCEPTIONS**

#### **Article 1**

##### **General exceptions**

1. For the purpose of Chapter [investment] section [liberalization of investment], 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 Chapter [investment] section [liberalization of investment], Chapter [Cross-border trade in services], Chapter [Entry and temporary stay of natural persons], Chapter [Regulatory framework] and Chapter [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>1</sup>
- (b) necessary to protect human, animal or plant life or health;<sup>2</sup>
- (c) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Title 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;
  - (iii) safety;
- (d) inconsistent with Articles [3] (National Treatment) [paragraph 1] of Chapter III (Cross-Border Trade in Services) and [x3] (National Treatment) [paragraph 1] of Section [X] (Liberalisation of Investments) of Chapter II (Investment), 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, investors, services or services suppliers of the other Party<sup>3</sup>.

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<sup>1</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>2</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.

<sup>3</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 investors 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

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(v) distinguish investors and service suppliers subject to tax on worldwide taxable items from other investors 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 (d) 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.