

**Disclaimer:** the negotiations between EU and Japan on Economic Partnership Agreement are not concluded yet, therefore the published texts should be considered provisional and not final. In particular, the provisions which appear in brackets are still under negotiations. However, in view of the growing public interest in the negotiations, the texts are published at this stage of the negotiations. The texts are published for information purposes only and are without prejudice to the final outcome of the agreement between the EU and Japan. Any such texts 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, and after the final texts are submitted and approved by the legislators.

## **Capital movements, payments and transfers and temporary safeguard measures**

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

### Article x.1

#### **Current Account**

Without prejudice to other provisions of this Agreement, the Parties shall allow, in freely convertible currency, and in accordance with the provisions of the Articles of the Agreement of the International Monetary Fund, as applicable, any payments and transfers with regard to transactions on the current account of the balance of payments between the Parties.

### Article x.2

#### **Capital Movements**

1. Without prejudice to other provisions of this Agreement, the Parties shall allow, with regard to transactions on the capital and financial account of balance of payments, the free movement of capital for the purpose of liberalisation of investments and other transactions as provided for in [Title XX Trade in Services, Investment and E-Commerce].
2. The Parties shall consult each other with a view to facilitating the movement of capital between them in order to promote trade and investment.

### Article x.3

#### **Application of laws and regulations relating to capital movements, payments or transfers**

The provisions of Article [X12] (Transfers) of Chapter [X] (Investment Protection), Articles [X.1] and [X.2] of this Chapter shall not preclude a Party from applying its laws and regulations relating to:

- (a) bankruptcy, insolvency or the protection of the rights of creditors;
- (b) issuing, trading or dealing in securities, or futures, options and other derivatives;
- (c) financial reporting or record keeping of capital movements, payments or transfers where necessary to assist law enforcement or financial regulatory authorities;
- (d) criminal or penal offenses, deceptive or fraudulent practices;

- (e) ensuring compliance with orders or judgments in adjudicatory proceedings; or
- (f) social security, public retirement or compulsory savings schemes.

Such laws and regulations shall not, however, be applied in an inequitable, arbitrary or discriminatory manner, or otherwise constitute a disguised restriction on capital movements, payments or transfers.

#### Article x.4

### **Temporary safeguard measures**

1. In exceptional circumstances of serious difficulties for the operation of the Union's economic and monetary union, or threat thereof, the Union may take safeguard measures with regard to capital movements, payments or transfers. Such measures shall not exceed six months, shall be strictly necessary and shall not constitute a means of arbitrary or unjustified discrimination between a Party and a non-Party in like situations.
2. A Party may adopt or maintain restrictive measures with regard to capital movements, payments or transfers<sup>1</sup>:
  - (a) in the event of serious balance-of-payments or external financial difficulties or threat thereof;<sup>2</sup>
  - (b) where, in exceptional circumstances, movements of capital, payments or transfers cause or threaten to cause serious macroeconomic difficulties related to monetary and exchange rate policies.
3. The measures referred to in paragraph 2:
  - (a) shall be consistent with the Articles of Agreement of the International Monetary Fund, as applicable;
  - (b) shall not exceed those necessary to deal with the circumstances described in paragraph 2;
  - (c) shall be temporary and shall be phased out progressively as the situation specified in paragraph 2 improves;
  - (d) shall avoid unnecessary damage to the commercial, economic and financial interests of the other Party;
  - (e) shall be non-discriminatory compared to non-Parties in like situations.
4. In the case of trade in goods, each Party may adopt restrictive measures in order to safeguard its external financial position or balance-of-payments. These measures shall

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<sup>1</sup> In the case of EU, such measures may be taken by an EU Member State in situations other than those referred to in paragraph 1 which affect the economy of that Member State.

<sup>2</sup> The Parties acknowledge that serious balance-of-payments or external financial difficulties, or threat thereof, as referred to in paragraph 2(a) may be caused among other factors by serious macroeconomic difficulties related to monetary and exchange rate policies, or threat thereof, as referred to in paragraph 2(b).

be in accordance with the General Agreement on Trade and Tariffs (GATT) and the Understanding on the Balance of Payments provisions of the GATT 1994.

5. In the case of trade in services, each Party may adopt restrictive measures in order to safeguard its external financial position or balance of payments. These measures shall be in accordance with Article XII of the General Agreement on Trade in Services (GATS).
6. A Party maintaining or having adopted measures referred to in paragraphs 1 to 3 shall promptly notify the other Party of them.
7. Where the restrictions are adopted or maintained under this Article, consultations shall be held promptly in the [Committee on Trade in Services and Investment – to be adapted] unless consultations are held in other fora. The consultations shall assess the balance-of-payments or external financial difficulty or other macroeconomic difficulties that led to the respective measures, taking into account, inter alia, such factors as:
  - (a) the nature and extent of the difficulties;
  - (b) the external economic and trading environment; or
  - (c) alternative corrective measures which may be available.

The consultations shall address the compliance of any restrictive measures with paragraphs 1 to 3. All relevant findings of statistical or factual nature presented by the IMF, where available, shall be accepted and conclusions shall take into account the assessment by the IMF of the balance-of-payments and the external financial situation or other macroeconomic difficulties of the Party concerned.