Commission Services Progress Report

on the

EU-Japan Business Round Table Recommendations 2011

"EU-Japan Business Cooperation: Growth for the Future"

Brussels, March 2012

The **European Union – Japan Business Round Table** (BRT) issued in 2011 its recommendations to the leaders of the EU and Japan:

"EU-Japan Business Cooperation: Growth for the Future"

Adopted during the BRT annual meeting held in Rome on 28 and 29 April 2011, those recommendations have been duly studied by the European Commission Services.

The following document outlines progress made in considering or implementing the various recommendations put forward by the BRT.

The progress report is divided into five parts corresponding to the five working parties:

"Trade Relations, Investment and Regulatory Cooperation"

Working Party A

Recommendations from both European and Japanese industries to the EU and Japan

WP-A / # 01 / EJ to EJ Strengthening the EU-Japan Economic Relationship

EU and Japan should start bilateral trade negotiations as soon as the conditions are met. These negotiations should be comprehensive and cover a broad range of trade issues.

The EU-Japan annual Summit that took place in Brussels on 28 May set out an important milestone in our bilateral relations. On that occasion, the EU and Japan agreed to start the process for parallel negotiations for a deep and comprehensive Free Trade Agreement (FTA)/Economic Partnership Agreement (EPA), including tariffs, non-tariff measures, services, investment, Intellectual Property Rights, competition and public procurement; and a binding agreement, covering political, global and other sectoral cooperation in a comprehensive manner, and underpinned by their shared commitment to fundamental values and principles.

The EU and Japan also decided to start discussions with a view to defining the scope and level of ambition of a future FTA. These discussions are under way. The European Commission will seek the necessary authorization for the negotiation of the FTA on the basis of a successful scoping exercise.

WP-A / # 02 / EJ to EJ Support of WTO Doha Development Agenda for fight against protectionism

EU and Japan should intensify their efforts to jointly push for a more ambitious outcome of the DDA. The focus should be on improving market access and trade facilitation.

Since these recommendations were issued, the EU has continued to make every effort to conclude the Doha Round. After the failure to agree on the so-called "modalities" in July 2008 – and then again in December 2008 - in July 2009, the G20 Leaders committed to conclude the Doha Round by the end of 2010. This of course did not happen because of the lack of consensus among the various participants of the negotiations, with further efforts in 2011 also not succeeding in making a break-through on the DDA.

Nevertheless, the results of the 8th WTO Ministerial Conference confirmed that WTO members are ready to re-engage in discussions in2012 through a "bottom-up" approach. This work will focus especially on those areas where progress is feasible, in particular on LDC questions and trade facilitation.

The EU continues making the strong case to its trading partners that concluding Doha is part of the global exit strategy from current economic crisis, as it would give both a boost to the world economy and reinforce the role of the WTO as insurance policy against trade protectionism.

The EU therefore remains firmly committed to achieving an ambitious, balanced and comprehensive outcome to the Doha Round as swiftly as possible on the basis of the progress already made and will actively invest in technical work in 2012 to move the DDA forward.

In the current GPA revision by major trading partners, the EU and Japan should also press for the suppression of unjustified exemptions and derogations of GPA rules.

On 15 December 2011, Parties to the plurilateral Government Procurement Agreement (GPA) adopted the revision of the 1994 Agreement with a view to expanding the market access coverage and to improving the discipline for awarding government contracts.

The overall deal is valued at between 80 to 100 billion dollars a year. Market access gains from the revised Agreement will come from the addition of new government entities including local governments and sub-central entities, services and other areas of the public procurement activities to the current Agreement. Japan for instance extended coverage of Private Finance Initiatives.

The 42 Parties also agreed to facilitate and speed up the accession of new members, such as China.

The EU and Japan worked closely together to reach a deal. In parallel to the successful conclusion of the revised GPA, the EU and Japan have reached certain understandings on key issues, including the reciprocal opening of railways and urban transport, and the treatment of small and medium-sized enterprises. The EU and Japan decided inter alia to set up a *Railway industrial dialogue*, with a private and public component, to monitor mutual market access. The dialogue will bring together industries and operators to discuss and ensure mutual recognition of safety standards.

WP-A / # 03 / EJ to EJ Applying international standards and enhanced cooperation in the promotion of new global standards

1. The Working Parties urges both authorities to adopt international products standards and certification procedures where applicable and, to promote harmonisation of standards and certification procedures, mutual recognition of product certification and when possible, and appropriate, mutual acceptance of functionally equivalent regulations.

The EU would like to reiterate its commitment to the promotion of international standards and the use of a risk-based approach to conformity assessment, including the greatest possible reliance on supplier's self-declaration of conformity in low risk sectors as a means to show compliance with mandatory requirements. Since the recommendations were made, the EU and Japan have been actively discussing ways to facilitate trade and reduce non-tariff barriers in the sectors mentioned in the Recommendation, and will continue to do so in their efforts to enhance their bilateral trade relations.

2. *The Working Party recognises the importance of global patent harmonisation and streamlining of the patent system as a way to promote innovation, reduce costs and boost legal certainty. The authorities of the EU and Japan should take the lead in these efforts.*

The European Commission supports global discussions and a future International Treaty aiming to streamline the global patent system, and considers it important to move forward. However, practically all competence for substantive patent law matters rests with EU Member States. The main role of the European Commission is to work in order to coordinate position among EU Member States and to facilitate progress.

Despite efforts in the WIPO Standing Committee on the Law of Patents (SCP) to unblock the rule-making process, discussions on international substantive patent law harmonisation are not progressing. The main point of concerns remains the future work of the SCP which is not clearly defined. The current work programme only reflects a fragile compromise between the divergent interests of developed countries (i.e. patent quality, client-patent advisor privilege) and developing countries (i.e. exceptions and limitations to patent rights, technology transfer, patents and health).

In Group B+ (contracting countries of the European Patent Convention and the other members of WIPO Group B: Canada, the US, New Zealand, Australia, Japan, South Korea), progress has been equally slow. There is a disagreement between countries over the details of any elements which would form part of any substantive agreement As a result, discussions have more recently concentrated on issues such as patent quality.

However, recent changes in the legislation in the US could facilitate progress in discussions. The last Group B+, in September 2011, noted that changes in the US and elsewhere had helped deliver greater alignment of patent law internationally, and welcomed a number of initiatives under way to analyse the most significant outstanding differences, including the comparative study by the IP5 on patent laws, and work commissioned by the US, Japan, EPO and a number of European Offices (the Tegernsee group).

3. *Given the nature of the issue and the importance for business as well as for society in general, the two Authorities should make an effort to harmonise the regulations for energy conservation, relevant labelling rules, and carbon footprint scheme.*

With the 2020 Strategy for smart, sustainable and inclusive growth, the EU is promoting energy-efficient and - more largely - resource-efficient technologies, processes and products. Developing energy-efficient and environmentally performing products and services constitutes an important element of the EU industrial policy, which aims to support the shift towards a competitive and low-carbon economy.

The Ecodesign Directive is a component part of this policy and is meant to be used in combination with other EU legal instruments: the Energy Label, the Ecolabel and Green Public Procurement. The Ecodesign Directive sets a framework for improving the environmental performance of energy-related products through ecodesign. 12 measures already adopted under the Ecodesign Directive provides for total energy savings by 2020 equivalent to more than almost 14% of the EU electricity consumption in 2009. New measures are in preparation, for example on air

conditioners, boilers or ventilation systems, as well as 4 voluntary self-regulations by industry. The voluntary agreement on complex set top boxes has been already endorsed.

The Commission services support enhanced cooperation between the EU and Japan in view of sharing best practices and refining their regulations and incentives to promote environmentally performing products and services.

4. *Following the agreement on the mutual recognition of the AEOs (Authorized Economic Operators) in June 2010 between the EU and Japan, the Authorities of the EU and Japan should aim at introducing further regulatory cooperation in order to give more concrete benefits to AEOs; for example, once an economic operator is approved as an AEO in Japan, its status should be extended to its subsidiaries in the EU, and vice versa.*

Mutual Recognition of AEOs including further benefits are discussed by AEO experts from both sides in their regular meetings concerning the implementation of the mutual recognition decision between Japan and the EU. The results of those discussions are reported to the EU-Japan Joint Customs Cooperation Committee for consideration.

5. *The two Authorities should create a framework between the EU and Japan in the development of practical application of new technologies, such as RFID and biometrics authentication technologies. This will enable and enhance cooperation among companies in the EU and Japan, and will also promote new international standardisation and lead to its dissemination.*

See below

6. *The two Authorities should disseminate model ICT use that contributes to the security and the operational efficiency of the supply chain. For example, RFID tags, sensors, biometrics authentication technologies and UCR (Unique Consignment Reference) numbers can build a more secure and visible international supply chain.*

The overall aim of EU Customs Policy is to facilitate legitimate trade whilst maintaining a level of controls guaranteeing the safety and security of citizens and protecting public health, the environment and the financial and economic interests of the Union and its Member States. The EU aims to cooperate with its trading partners to ensure the end-to-end security and facilitation of the international supply chain.

The European Commission is convinced that modern technology is one of the cornerstones to enable Customs to adopt modern risk management working methods. A comprehensive and effective multi-layered approach to risk management will result in increased freight screening, a reduction of physical inspections and a better focus on the risk associated with specific consignments.

In order to attain the above mentioned objectives, EU Customs aims to develop a wide application of modern technologies in the following areas:

- Techniques for advanced and high speed data analysis;

- Techniques for ensuring cargo and container integrity (e.g. E-seals, Container Security Device (CSD) and smart containers);
- Techniques for supervision and monitoring maritime and air container transport (tracking/tracing);
- Non intrusive inspection techniques and Radiation and Nuclear detection equipment.

Bilateral discussions on technology and equipment are foreseen within the EU - Japan Risk Management expert group.

7. *The European Commission and the Japanese Government should support the ICT for Energy Efficiency Forum, actively participating in it and disseminating its outcome in order to encourage global collaboration.*

To be provided later

8. *The European Commission and the Japanese Government should collaborate on achieving international harmonisation at CODEX in the description and standards for food for specified health use/functional foods.*

To be provided later

WP-A / # 04 / EJ to EJ **<u>Supporting timely development of business</u>**

1. *Social security contributions (avoiding double contributions):*

Japan and the Member States of the EU should make further efforts to expand the network of Social Security Agreements. In addition, they should introduce an interim measure, by which a host country should either exempt contributions to pension funds unilaterally or refund the contributions in full when expatriates return to their home country.

Social Security is not harmonised in the EU and it is for Member States to organise their own social security schemes and to lay down their own national conditions according to which social security benefits (including pensions) are granted, the contributions to be made, the amount of the benefits and the period for which they are granted. Accordingly, the possible refund of contributions paid into a Member State's social security system is a matter of national law and is not regulated at EU level.

The problem of double contributions can be addressed by concluding bilateral social security agreements with Member States. It is the competence of Member States to conclude social security agreements with third countries. Such agreements can allow workers posted from Japan to work on the territory of a Member State, but be exempted from contributing to the Member State's social security system for an agreed period of time.

In this context, the Commission is aware that a growing number of bilateral social security agreements between Japan and EU Member States have been concluded, or

are being negotiated at present. The Commission wishes to encourage closer cooperation between Member States in the conclusion and operation of bilateral agreements with non-EU states. Additionally, it believes that the possibility to make common EU agreements on social security with certain non-EU states such as Japan should be explored.

In addition, the Council of the EU and the European Parliament are currently considering a proposal of the Commission for a Directive dealing with the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer (ICT). The aim of the proposal is to attract non-EU workers with much-needed skills, in particular key personnel of transnational corporations temporarily transferred to the EU. The proposal is an important part of the EU common migration policy. The proposal specifically accommodates the fact that key personnel may be sent to work in an EU country yet, by virtue of the application of bilateral agreements made with the country in question, will not be required to make social security contributions there. A key aspect of this proposal is to allow such temporary non-EU workers short-term mobility between Member States in order to serve the needs of their employer.

2. *Personal data protection regime:*

The Working Party believes that the ultimate objective of personal data protection for individual business is to adopt and implement a reliable and cost-effective personal data protection system at the level of a corporate group, within which the flow of data should be free across national borders. In order to achieve this, the national legislation of each country should promote such a system rather than impede by creating different requirements.

The European Commission acknowledges that the nature of globalisation, ultra-fast IT networks and the global architecture of the cloud-based services necessitate stable rules for transfers of personal data beyond the geographical borders of the EU. This is why the European Commission is, today as well as in its Reform proposals, promoting Binding Corporate Rules (BRCs) as an instrument that will make it easier and safer for companies to be active in these market segments. The Commission strongly recommends and supports such initiatives that allow for innovation to thrive while at the same time ensure the individuals' right to data protection.

Adequacy finding related to a third country implies the free flow of personal data without any additional check.
If Japan is interested to work towards an adequacy finding, it would be necessary to intensify its efforts in this respect. However in the meantime other ways of lawful data exchange with EU subsidiaries/companies are available for Japanese undertakings

In the proposed draft Regulation on data protection presented by the Commission on 25 January 2012 and that will replace Directive 95/46 on data protection; the European Commission addressed the red tape concerns of undertakings by removing unnecessary financial and administrative burdens, which result, among other factors, from the fragmented legal data protection framework between EU Member States.

The data protection reform also intends to simplify and transfer the ways to transfer lawfully data from the EU to third countries.

Data protection is recognised in the EU as a fundamental right. Appropriate safeguards are necessary when data are transferred. The current Directive 95/46 on data protection provides for several possibilities to transfer personal beyond the recognition of adequacy of the protection offered by the third countries. The proposed framework expands and streamlines the possibilities to exchanges personal data between the EU and third countries. The European Union's economic partners will benefit significantly from this reform.

WP-A / # 05 / EJ to EJ **Cooperation in the area of climate change and environment**

1. ***Collaboration to advance new technologies for more efficient energy use***

The Working Party recommends that the EU and Japan should work together, for example, through common standards and testing procedures, and by fostering industry cooperation to advance these technologies and create larger markets.

By 2020, the EU wants to cut energy consumption by 20 percent. At the moment – with all the measures on EU and national level in place so far – it is estimated that the EU would achieved approximately 9% of savings. A new set of measures for increased Energy Efficiency was proposed by the European Commission in June 2011 to fill the gap and put back the EU on track. The proposed Energy Efficiency Directive brings forward measures to step up Member States efforts to use energy more efficiently at all stages of the energy chain – from the transformation of energy and its distribution to its final consumption. The proposed measures include:

- Legal obligation to establish energy saving schemes in all Member States: energy distributors or retail energy sales companies will be obliged to save every year 1,5 % of their energy sales, by volume, through the implementation of energy efficiency measures such as improving the efficiency of the heating system, installing double glazed windows or insulating roofs, among final energy customers.

- Public sector to lead by example: public bodies will push for the market uptake of energy efficient products and services through a legal obligation to purchase energy efficient buildings, products and services. They will further have to progressively reduce the energy consumed on their own premises by carrying out every year the required renovation works covering at least 3% of their total floor area.

- Major energy savings for consumers: easy and free-of-charge access to data on real-time and historical energy consumption through more accurate individual metering will now empower consumers to better manage their energy consumption. Billing should be based on the actual consumption well reflecting data from the metering.

- Industry: Incentives for SMEs to undergo energy audits and disseminate best practices while the large companies will have to make an audit of their energy consumption to help them identify the potential for reduced energy consumption.

- Efficiency in energy generation: monitoring of efficiency levels of new energy generation capacities, establishment of national heat and cooling plans as a basis for a sound planning of efficient heating and cooling infrastructures, including recovery of waste heat.

Energy efficiency has been a regular topic on the agenda of the EU-Japan Regular Energy Dialogue. Current discussions on enhancing EU-Japan bilateral cooperation on energy are looking also at possibilities of activities in the energy efficiency field. Additionally, joint work is also ongoing in the context of international organizations addressing this policy issue, namely the International Energy Agency and the International Partnership on Energy Efficiency Cooperation.

While the recommendation does not specifically raise the issues of export credits, it is worth noting that on the issue of official export credit support and climate change, the EU has made every effort in the context of the Arrangement to include climate change mitigation techniques, i.e. carbon capture and storage, fossil fuel substitution and energy efficiency transactions in the relevant sector understanding with a view of these projects benefiting from longer repayment terms. The negotiations are expected to be finalised in the spring 2012.

2. *Integrated approach for CO2 emission reduction*

Although Japan and Europe still have relatively high per-capita emissions, their relative share in global greenhouse gas emissions is steadily decreasing. Both the EU and Japan are adopting challenging targets to reduce the level of CO2 emissions. An integrated approach that combines the efforts of all relevant parties involved, including the auto industry, the fuel sector, policy makers and drivers, to achieve the objective of CO2 reductions is the most balanced and realistic way to achieve this goal. Working Party A supports this approach, and urges the EU and Japanese Authorities to cooperate in the transport and other sectors to achieve the highest reductions possible at the minimum social cost.

Reducing CO_2 emissions from road transport requires a comprehensive approach, including action to improve vehicle efficiency, the use of sustainable alternative fuels and the decarbonisation of the energy used as well as influencing the level of use. The EU Transport White Paper[1], along with other strategy documents, is responding to that request by putting forward a wide range of actions to reduce transport CO_2 emissions. The Commission is keen that actions by Member States, regional or local authorities and stakeholders are identified and promoted. Care is needed to ensure the overall approach is neutral with regard to which technologies are deployed.

The EU has already put in place ambitious measures for reducing CO2 emissions from light duty vehicles and the Commission follows with great interest similar developments in Japan and other countries. The efficient implementation of these CO2 reduction measures also requires close cooperation with the automotive industry. The Commission has regular exchanges with the Japanese car manufacturers

[1] http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0144:FIN:EN:PDF

association JAMA as well as with Japanese manufacturers directly to discuss implementing issues specific to them and to take account of the experience gained from implementing CO2 reduction measures in Japan.

WP-A / # 06 / EJ to EJ **Better Regulation**

The Working Party recommends that Japanese and European policy-makers increase mutual understanding of existing and upcoming regulations on each side to exclude unwittingly taking initiatives that create barriers to trade. Both sides should commit to exchanging annual legislative work programmes at the earliest stage to prevent regulatory divergence and new trade barriers. In addition, the two sides should agree to an early warning system for draft legislation in order to make the dialogue effective.

The EU-Japan annual ICT Dialogue serves as a forum for exchanging information on existing and forthcoming regulations, and also discuss with each other how to promote better regulation.

Recommendations from Japanese industry to the EU

WP-A / # 13 / J to E **EU policy on company law**

The European Commission adopted a proposal for a Council Regulation on the status for European Private Company in June 2008. According to the proposal, it was to be applicable from 1 July 2010. The Council should adopt it without delay.

The statute should realize the following points.

- *Widely accessible, easy to set up and inexpensive to run*
- *Allowing a great deal of flexibility to founders and shareholders to organize themselves in the way that is best suited to their activities: and*
- *As uniform throughout the EU as possible.*

The proposal on the Statute for a European Private Company ("the SPE") was adopted by the European Commission on 25 June 2008.

The SPE has been designed to address the current onerous obligations on small and medium-sized enterprises (SMEs) operating across borders, which need to set up subsidiaries in different company forms in every Member State in which they want to do business. In practical terms, the SPE would mean that SMEs can set up their company in the same form, no matter if they do business in their own Member State or in another. Opting for the SPE will save entrepreneurs time and money on legal advice, management and administration. The SPE aims at offering SMEs a very flexible yet transparent company form.

This new company form would thus enable SMEs to do business throughout the EU, with the aim of enhancing growth.

The proposed SPE Regulation has to be adopted by a unanimous decision of the Member States in the Council of Ministers of the European Union. The European Parliament is also required to approve the proposal. The European Parliament adopted its report on the proposal in March 2009.

Technical discussions have been completed during the Swedish Presidency (second semester 2009) however Member States could not reach a unanimous political agreement on the file. In 2011, the Hungarian Presidency reopened the negotiations, but it could not obtain an agreement of all Member States.

The Commission services are now reflecting on possible alternative initiatives to support SMEs engaged in cross-border activities. Stakeholders' input is sought through the public consultation on the future of the European Company Law launched in February 2012.

WP-A / # 14 / J to E Japanese expatriates

1. The Commission presented in July 2009 a proposal for a Directive on conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer (COM (2010) 378 final). We believe the Directive should be further improved:

The Commission welcomes the fact that Japanese industry finds the proposal for intra-corporate transferees' directive important in increasing the attractiveness of the EU for multinational businesses and that it will expedite and facilitate the transfer of intra-corporate transferees (ICTs) as these elements are amongst the main objectives which dictated the need for the proposal. As noted in the 2010 Progress Report "EU-Japan Business Dialogue Round Table Recommendations 2010", the proposal provides for response to longstanding requests from Japan concerning the facilitation of intra-corporate transfers of skilled third country nationals both to and within the EU.

With regard to the present individual Japanese industry's recommendations for improvement of this instrument through concrete changes thereof, it should firstly be stated that the proposal is currently in the first reading of the legislative process and thus under discussions in the European Parliament and in the Council. The applicable procedure is now co-decision, with the qualified majority requirement in the Council.

The legislative process may necessarily bring further changes to the proposal as commented by the Japanese industry, including on the issues which are covered by the recommendations singled out by the Japanese side. No action of the Commission which would affect the proposal is currently intended, in particular in the areas covered by the four recommendations of the Japanese.

It is however not excluded that certain amendments brought forward by the co-legislators will meet the expectations of Japanese industry. This may particularly be the case for provisions on the immediate access to labour market by ICT spouses. It is, however, too early to prejudge the outcome of the legislative process and advise the Japanese side accordingly.

The timing for the conclusion of the legislative process is difficult to estimate. The main orientations of the European Parliament should be known in the beginning of 2012. Depending on when the text in the Council stabilises, informal *trilogue* discussions between the institutions could start.

Subject to the developments in the Council's Working Party, we hope that the discussions could start before the summer brake. The duration of this stage of legislative process is equally difficult to foresee. On many aspects the views of co-legislators converge, however differences continue to exist. We believe that this proposal is important for EU growth and for the objective of creating favourable conditions for multinational businesses and thus hope that any unnecessary delays of the legislative process on this file will be avoided.

1) The maximum duration of the transfer to the European Union should be 5 years for managers and specialists rather than 3 years currently set in the proposal (Article 16.3)

The proposal is an instrument regulating temporary migration - as opposed to long-term or permanent one. The proposal on ICTs is about movements of managerial and

specialised staff of multinational companies, temporarily relocated for short assignments to the EU, where a three year period was considered as sufficient. ICTs are not intended to settle permanently in the EU. Should the skills need be permanent, other instruments of legal migration could be relevant, which could imply additional eligibility criteria, for instance that a work contract should be signed with the EU entity and that Member States could possibly apply the labour market test.

In addition, the proposal builds its certain aspects of specific EU-25 commitments under the GATS and bilateral trade agreements, where the 3-years constitute a typical time-frame for a transfer. The proposal thus complements and facilitates the implementation of these GATS commitments.

Moreover, there is nothing in the proposal which would prevent an ICT from remaining on the territory of the EU following the completion of the 3-year transfer on the basis of another authorisation to work and reside. Finally, there is nothing in the proposal which would *a*
priori prevent an ICT from re-applying for an ICT status. The relevance of temporary status could be-questioned in such cases, however.

(2) It should be possible for ICTs to submit the application for a work and residence permit after entering the assigned country based on the waiver of visa requirements.

The whole set of the relevant provisions in the proposal aims, at safeguarding - to the extent possible - the expediency and efficiency of the admission and ICT permit issuance procedures. In addition, a change to this requirement would imply an overhaul of the design of the proposal. The ICT scheme in the proposal is about *temporary detachments* of third country managers, specialists and graduate trainees from third-country companies to the EU. Given this context, the ICT scheme bases itself on the *existing employment relationship* with the entity in the third country; prior employment in the relevant entity in the third country in the period *immediately proceeding* the transfer (if required by the Member State concerned), and on the ability to *transfer back* to the entity in the third country at the end of the ICT assignment to the EU. To facilitate and expedite the admissions, the proposal sets out a short (in principle, 30-days long) period for the assessment of the application.

Moreover, the proposal recognises that there are situations where visa applications or visas are not required and an application for an ICT permit is therefore sufficient. In cases, where visa would be required the proposal advocates that Member State concerned shall grant third country national whose application for admission has been accepted *every facility to obtain*
the requisite visa. Importantly for the attractiveness of the scheme, in the event of ICT's intra-EU mobility, the *proposal does not require for an ICT to leave the territory* of Member States in order to submit relevant visa or residence permit applications. This would partly address the Japanese industry's recommendation.

Finally, there are other provisions of the migration *acquis* which can appropriately address situations of legally residing third country nationals.

(3) It should be possible for the spouses of the ICT's to be automatically granted the work upon their arrival.

The Commission recognises the importance of setting out attractive conditions for the family members of the ICTs to enter and reside in the EU. As a result, the proposal derogates from the existing legislation in the field and extends the benefit of the Directive 2003/86/EC to ICTs and their family members, despite the fact that they are

temporary migrants without reasonable prospects for a permanent residence in the EU. In addition, the proposal contains further advantageous provisions than these laid down in the Directive 2003/86/EC (eg. faster procedures). The maximum period where the Member States *may* limit access of family members to labour market is 12 months. At this stage, it is not clear how and if the Member States would make any recourse to this *possibility* and effectively limit market access of ICTs' spouses. Finally, it should be noted that the provisions of the proposal in the context of family reunification (Article 15) constitute only a required minimum starting point. In accordance with Article 4 of the proposal, Member States may decide to apply more favourable rules to ICTs' spouses than the ones laid down in the proposal.

(4) The application of integration measures to ICTs should be voluntary

The proposal does not impose any integration measures on the ICTs.
The only situation where the integration measures could be applied is in the case of ICTs family members. However, this is only an *option* which could be exercised by the Member States. The extent, to which such a requirement would be applied by the Member States, if at all, is currently difficult to estimate. Secondly, if any integration measures would be required towards the family members of ICTs, they could only be imposed after the family reunification has been granted and not as a pre-condition of to enter the EU. This flexibility constitutes another attractive derogation from the standard rules applied in the case of family reunification.
The current provisions of the proposal on integration measures and their potential scope are already very favourable both towards the ICTs and their family members.

2. More than five years have passed since the due date of the transposition into the law of the Member States of the Directive 2003/109/EC on long-term residence status. The first report required under the Directive was due by 23 January 2011.
We look forward to hearing from the European Commission about the actual state of its implementation in each Member State.

The Directive 2003/109/EC is not applicable in the UK, Ireland and Denmark.
Japanese nationals in the UK, where their number is the highest among EU countries, therefore, do not benefit from this Directive. The UK government should take action in order to enable them to benefit from the EU directive.

State of the implementation of the Directive

On 28 September 2011, the Commission adopted a report on the application of Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents. The report gives an overview of the state of implementation of the Directive by Individual Member States and identifies possible problematic issues. This should address the request of Japanese industry.

Extending the geographical scope of the Directive

As to the recommendation of Japanese industry to extend the application of the Directive 2003/109/EC to the UK, please note that according to Article 4 of the Protocol 21 *on the Position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice* - which is annexed to the Treaty - the UK has

the right to opt-in into the migration *acquis* anytime after the adoption of the relevant measure. Therefore such a decision is a matter of national competence of the UK.

WP-A / # 15 / J to E **EU Patent and Patent Prosecution Highway**

1. We welcome the launch of an enhanced cooperation procedure on the creation of unitary patent protection authorised by the Council on 10 March 2011. We would like to urge the EU and its Member States to adopt and implement an EU Patent together with the European and EU Patent Court as soon as possible. We expect that each EU member state which agrees this system will approve ratification since the beginning.

The European Commission has placed the reform of the patent system in Europe very high on its agenda (EU 2020 Strategy and Single Market Act).

The envisaged reform of the patent system comprises two main elements – the creation of unitary patent protection and the setting up of a unified specialised patent court. The unitary patent protection will only enter into application once the Unified Patent Court is set up. The two elements follow different legislative procedures, but both are considered indispensable and are discussed in parallel as a package. It is foreseen that both initiatives would be concluded in 2012.

- Unitary patent protection

In April 2011, the Commission proposed two regulations implementing enhanced cooperation in the area of unitary patent protection as authorised by the Council on 10 March 2011. The first regulation sets out the substantive rules on obtaining unitary effect for granted European patents, and the second contains the applicable translation arrangements. The enhanced cooperation on unitary patent protection is based on the existing system of European patents. Under the proposed system, once a European patent is granted by the European Patent Office, the patent holder will have the possibility to request a unitary effect for 25 EU Member States participating in the enhanced cooperation, instead of validating the patent in each of them separately. At this stage, Spain and Italy have decided not to take part in the enhanced cooperation.

In December 2011, the Council and the European Parliament reached a political agreement on both regulations. A plenary vote in the EP is to take place in February 2012, provided Member States also find an agreement on the Unified Patent Court.

- Unified Patent Court (UPC)

Member States are also negotiating an agreement on the Unified Patent Court (UPC) for the settlement of litigation related to "classical" European patents and European patents with unitary effect, with a view to reducing legal costs and increasing legal certainty.

In June 2011, the Hungarian Presidency presented a revised draft Agreement on the UPC taking into consideration the Commission's views to address the legal concerns of the Court of Justice of the EU (opinion 1/09 released in March 2011). In particular, it was proposed that the UPC would be a court common to the Member States, while the participation of third countries (and the EU) would be excluded.

The Polish Presidency continued very intense negotiations on the revised draft Agreement, including on its compatibility with the Union *acquis*. The Competitiveness Council of 5 December 2011 did not to reach consensus on the text due to a disagreement concerning the location of the seat of the central division of the Court. The Danish Presidency is actively following up with a view to ensuring the signature of the Agreement before the end of its Presidency (i.e. 30 June 2012).

2. The Patent Prosecution Highway (PPH) aims to facilitate, and enhance the quality of patent examination at a participating IP office, by utilizing and sharing the result of examination at another participating IP office. Therefore, the PPH is highly beneficial for patent applicants as it will expedite and improve examinations. The EPO has been conducting a trial of the PPH with JPO and USPTO. The PPH has been implemented between JPO and USPTO since 2008. We would like to urge the patent offices of the EU Member States to participate in the PPH.

The European Commission is concerned about the situation of the patent offices worldwide and their performance. The European Commission thus welcomes initiatives aiming at improving the efficiency and speed of the patent granting process, such as the Patent Prosecution Highway (PPH). However, the PPH and other utilisation schemes would be considerably more efficient if there were more "global" substantive patent law harmonization and the same "claims' patterns" for the patent applications worldwide.

The European Commission notes that Austrian, Danish, Finnish, German, Hungarian, Portuguese, Spanish, Sweden and UK national patent offices have joined the PPH pilot projects. The PPH leverages fast-track patent examination procedures to allow applicants to obtain corresponding patents faster and more efficiently. It also permits each office to exploit the work previously done by the other office.

The European Patent Office (EPO) and the Japan Patent Office (JPO) launched a bilateral Patent Prosecution Highway pilot programme in January 2010. The EPO and the JPO have agreed to revise the participation requirements and extend the PPH trial period with effect from 29 January 2012, for a period of two years. Both offices will evaluate the results of the pilot programme to determinate whether and how the programme should be fully implemented after the trial period.

The European Commission continues to believe that efforts should be invested in rectifying the deficiencies inherent in the PCT framework. The European Commission would mainly support proposals that will not undermine the current PCT system or will not hamper its future development as a work-sharing tool.

WP-A / # 16 / J to E <u>Fight against counterfeited, pirated and contraband goods</u>

We would like to see the EU to take further necessary steps such as a possible proposal for modification of the Enforcement Directive with a view to step up efforts in all the EU Member States to fight against counterfeited, pirated and contraband goods, both inside and outside the EU. We would also like to urge the EU to make sure to implement Council Regulation (EC) No. 1383/2003 of 22 July 2003 concerning customs action against goods

suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights. At present, several Member States have not implemented it. It seems that the customs authorities in those countries are unable to take the decision to ban counterfeit goods. All the EU Member States should implement this regulation.

In order to strengthen the enforcement of intellectual property rights (IPR), the Commission adopted on 24 May 2011 a proposal for a new Regulation of the European Parliament and of the Council concerning customs enforcement of intellectual property rights.

The Commission proposes to widen the list of possible IPR infringements that can be controlled by customs at the border. Certain infringements that are excluded from the current Regulation would be included, such as illegal parallel trade and lookalike trade mark infringements. Furthermore, the list of protected rights would be extended to include trade names, topographies of semiconductor products, utility models and devices to circumvent technological measures.

The Commission also proposes to introduce a mechanism to allow those responsible for a consignment suspected of infringing IPR, an opportunity to give their opinion before customs initiate any procedure to detain and possibly destroy the goods. Other adjustments to the current procedures are also proposed to ensure that administrative burdens are kept to a minimum and that the legitimate interests of all traders are taken into account. The Regulation would maintain procedures enabling customs, under certain conditions, to have goods abandoned for destruction without having to undergo formal and costly legal proceedings.

A specific procedure is also proposed for small consignments of suspected counterfeit and pirated goods covered by an application, which would allow for goods to be destroyed without the involvement of the right holder.

The issue of costs of storage and destruction of infringing goods has attracted attention from different stakeholders. The Regulation would continue to provide that storage and destruction costs directly incurred by customs be assumed by the right holders requesting customs action, though this would not preclude them from taking legal action to recover such costs from the primary liable party. However, it is proposed to introduce an important exception for small consignments, for which storage and destruction costs would be assumed by customs.

The Regulation would maintain the ability for customs to control for the purpose of enforcement of IPR in all situations where goods were under their supervision. Also, the distinction between the procedural nature of the legislation and substantive law on intellectual property would be emphasised.

<u>IPR issues</u>

The European Commission aims to ensure a highly efficient, proportionate and predictable system of enforcement of intellectual property rights, both within and outside the internal market. The European Commission remains committed to fighting counterfeiting and piracy by employing a balance between education and enforcement.

The European Commission published a Communication in May 2011 on the "Single Market for Intellectual Property Rights" which set out the main areas for future action in the field of IPR enforcement: (1) improving public awareness, (2) ensuring a sustainable structure for the European Observatory on Counterfeiting and Piracy, and (3) reviewing the IPR Enforcement Directive.

Regarding the revision of IPR Enforcement Directive, the Commission's intention is to make IPR enforcement more effective by clarifying some of the Directive's provisions and by adapting it to the challenges posed by the use of the internet. The Commission is carefully preparing the ground for this revision. Following an evaluation report in December 2010, the Commission services undertook a public consultation in early 2011 and organised a public hearing in Brussels in June 2011. Work on an impact assessment started in the 2nd half of 2011.

The Commission submitted a proposal in May 2011 to transfer the "European Observatory on Counterfeiting and Piracy" to the Office for Harmonisation in the Internal Market (OHIM) in Alicante. Negotiations in the Council and the European Parliament proceeded well and the Regulation is expected to be adopted in spring 2012, which should pave the way for a sustainable structure for the Observatory.

In parallel, the Commission facilitated the signing of a Memorandum of Understanding between stakeholders in May 2011, to explore how the sale of counterfeit goods over the internet can be reduced through voluntary measures. Follow-up and evaluation will be ensured through regular meetings with stakeholders.

WP-A / # 17 / J to E <u>Competitiveness of the EU economy</u>

<u>1. Europe 2020 and the Single Market Act</u>

We express our continued support for Europe 2020. In particular, we support the Single Market Act - the initiative of the European Commission to re-launch the single market.

We would like to repeat the importance of the single market for the EU and the Europe 2020 strategy.

We believe that the single market can offer even more growth and jobs when its full use is realised.

We agree to the Commission's statement that the lack of regulatory convergence internationally is a major obstacle to international trade. We believe that the EU should go further than deregulations and should aim to build an area of common regulatory environment internationally.

The EU should make utmost efforts to realise the 50 proposals in the Single Market Act by 2012.

The Single Market is the core economic driving force of the European Union and remains the most effective means of responding to the current crisis. Its growth potential has not yet been fully exploited. The Commission estimates that completing,

deepening and making full use of the single market would potentially produce growth of about 4% of GDP over the next ten years.

In line with EU 2020, the Commission adopted in October 2010 a communication: towards a Single Market Act. In April 2011 the Commission adopted the final text of the Single Market Act.

Based on a Europe-wide public debate, European Parliament Resolutions and Council Conclusions, the Commission proposed twelve levers to boost growth and strengthen confidence in the single market. The Act puts forward a series of actions, including twelve key actions, to create new growth and jobs and strengthen the confidence of businesses and citizens in the single market.

The Commission committed itself to delivering legislative proposals for the twelve key actions by the end of 2011. By that date, the Commission had presented proposals for ten of the twelve key actions, with only the proposal for a Posting of Workers Enforcement Directive and a Regulation seeking to clarify the exercise of freedom of establishment and freedom to provide services alongside fundamental social rights postponed to the first quarter of 2012. The European Parliament and the Council committed to treat the Commission's key actions as a priority. The Commission trusts that the twelve key actions can be adopted by the European Parliament and the Council by the end of 2012.

In addition, the Commission has either tabled proposals for or completed more than half of the 50 actions announced in the Single Market Act. A wide range of actions at international level will be necessary to underpin these concrete actions. The single market, financial levers and external policy tools, will be fully mobilised to tackle bottlenecks and deliver the Europe 2020 goals.

In 2012 the Commission will take stock of the progress on the Single Market Act and present its programme for the next stage with a view to identifying any areas with still unexploited growth potential and, where appropriate, pinpointing new drivers of growth.

2. Revision of high customs tariffs on audio-visual products and passenger cars

The EU is protecting some sectors of its industries by maintaining high customs tariffs, for example 14% for audio-visual products and 10% for passenger cars, even though these industries are at the forefront of international competition and need stimuli for competition rather than protection. Such protection will not help enhance international competitiveness of those sectors. Furthermore, it is only their users and consumers in the EU who unfortunately have to pay the resulting higher prices. The European Commission and the member states should abolish or drastically reduce these high customs tariffs.

The EU applies relatively high tariffs on passenger cars and some audiovisual products. However, these tariffs are no peak tariffs (<15%) and generally lower than tariffs applied by Japan on agriculture and foodstuffs or textiles, clothing and footwear. The European Commission is favorable to lowering or even eliminating tariffs through multilateral or bilateral negotiations. In the context of negotiations on NAMA/DDA the EU has proposed cutting tariffs through a formula as well as through specific sectoral initiatives. In fact, the EU and Japan have cooperated closely on tariff-cutting proposals. Awaiting the outcome of the Doha Round, the EU

is also involved in negotiating on FTA's with a view to reciprocally eliminating or reducing tariffs bilaterally.

3. Customs Classification

The Harmonized System Convention rules should be the basis for customs classification. However, we also believe it to be a fact that the rules do not provide a clear method of classification for such products as electric-electronics products, where the technical convergence of IT and non-IT products has emerged. This situation makes interpretation and classification more difficult and complicated than ever, and has undermined transparency, predictability and promptness for businesses. It is requested that the EU acknowledges the concerns and difficulties the businesses are facing, and based on the panel reports by WTO issued on information technology dispute last August, to take steps to increase predictability and improve transparency upon importation of the IT products. The improvement of the said situation will indeed contribute to the ICT industry development.
In the Netherlands, the Supreme Court ruled that toner cartridges should be classified as chemical products and thus subject to 6% customs duty. In HN classification, it is a part of copiers and thus subject to 0% customs duty. The discrepancy should be resolved without delay.

The EU supports the BRT statement that customs classification should be done in accordance with the internationally agreed rules of the Harmonised System Convention (HS). The EU always respects the HS in its classification decisions and these decisions are always thoroughly justified, thus ensuring all the necessary transparency.

In the field of electronic goods, due to the technical convergence between IT and non-IT products, the EU acknowledges that the classification of such products has become more and more challenging. In this respect, the EU has provided guidance on the classification of specific IT products, and is keen on continuing to do so, in order to increase predictability and transparency for both trade and customs. If, in some specific cases, the HS nomenclature and rules might appear outdated, the EU would be ready to examine any proposal to amend or update it.

Classification of toner cartridges, as for all other goods, is governed by the rules of the HS nomenclature. As classification is based on facts and law, it is first necessary to examine the individual characteristics and properties of the product under consideration and perform an overall assessment on a case-by-case basis.

In light of the General Interpretative Rules of the Nomenclature, the EU can only agree, that if a product has the objective characteristics of a part or accessory of a printer, copying or facsimile machine as described in heading 8443 of the HS nomenclature, it would be classified under that heading. However, should the product not have the characteristics of a product of heading 8443, other headings of the Nomenclature should be envisaged.

The EU trusts that the Supreme Court of the Netherlands has assessed correctly the objective characteristics and properties of the product presented to it. However, if the

Japanese still consider it necessary, the EU is willing to provide the necessary further clarifications.

4. Taxation

4.1 Common Consolidated Corporate Tax Base

We welcome the proposal for CCCTB (Common Consolidated Corporate Tax Base) proposed on 16 March 2011. We hope for its swift adoption. CCCTB should realise the following points to improve the competitiveness of the EU economy.

• Non-taxation of unrealised gains on goodwill within a group of companies that form CCCTB

• Non-application of arms-length principle within a group of companies that form CCCTB.

• Off-setting of profits and losses within a group of companies that form CCCTB.

As regards transfers of assets within a CCCTB group, Article 70 in conjunction with Article 59(1) of the CCCTB proposal provides for such exemptions. As a matter of principle, assets transferred to another group member in the context of a business re-organization within a group shall not give rise to profits or losses for the purposes of determining the consolidated tax base.

As regards the non-application of the arm's-length principle within a CCCTB group, Article 59 provides that, in calculating the consolidated tax base, profits and losses arising from transactions directly carried out between members of a group shall be ignored.

As regards the off-setting of profits and losses within a CCCTB group, this is an automatic outcome of consolidation, as prescribed in Article 57(1).

State of play, prospects of implementation, perception by services and need for modification

The Commission tabled its proposal for a Council Directive on 16 March 2011.
In Council, the discussion currently involves an article-by-article examination of the technical elements of the proposal.
The European Parliament, which, according to the Treaties, shall be consulted, is scheduled to vote in plenary on the CCCTB in the second half of March.
The European Economic and Social Committee already adopted, according to the Treaties, an Opinion on the CCCTB proposal on 26-27 October 2011.

The Committee of the Regions also gave an Opinion on the proposal on 14-15 December 2011.

The CCCTB proposal has lately received significant political support. It has been quoted in the Euro-Plus Pact (signed by all Member States with the exception of CZ, HU, SE and the UK), as well as in joint letters to Council President Hermann van Rompuy whereby France and Germany announced their intention to harmonize their corporate tax rules and supported a common corporate tax base at EU level.

4.2 Merger Directive

The scope of the Merger Directive (90/434/EEC) should be expanded to include the transfer of real estates and other intangible assets in reorganisation. Furthermore, the shareholding requirements should be abolished.

To be provided later

4.3 EU Transfer Price Directive

To provide sufficient incentive to the compliance with the EU TPD, the EU and the Member States should commit themselves to exemption from penalties (i.e penalties related to non-compliance with documentation requirements, penalties related to transfer pricing adjustments and interest related to adjustments) if a company submits an EU TPD acting in good faith and in a timely manner.
The EU and its Member States should not treat companies in good faith and companies that try to evade taxation in the same way as the imposition of penalties even when EU TPD is prepared in good faith could lead to undesirable distortions in the single market by forcing companies to adopt artificial transfer price in order to avoid penalties.

More coordination and cooperation between EU MS in the field of transfer pricing through simplification and rationalisation of transfer pricing regimes both increase international competitiveness of EU businesses and also benefit Japanese businesses operating in the EU.

To enhance this cooperation the European Commission set up the "EU Joint Transfer Pricing Forum" in 2002. So far the JTPF has adopted recommendations on several topics which were transposed into soft law instruments i.e. a Code of conduct on the effective implementation of the Arbitration Convention (AC), a Code of conduct on transfer pricing documentation for associated enterprises in the EU, Guidelines for Advance Pricing Agreements (APAs), guidelines on low value adding intra-group services, approaches to transfer pricing triangular cases and a report on SMEs.

The practical implementation of these soft law instruments is regularly monitored in order to ensure their smooth functioning and updated versions are, where appropriate, adopted, i.e. the revised Code of Conduct on the AC.

- The Code of Conduct on transfer pricing documentation, published on 10 November 2005 (COM(2005) 543), addresses the issue of transfer pricing related penalties. It is recommended that MS should not impose a documentation related penalty where:
    - a taxpayer complies in good faith, in a reasonable manner and within a reasonable time with standardised and consistent documentation as described in the EU TPD or with a MS's domestic documentation requirements and properly applies this documentation to determine his arm's length pricing; and

- a taxpayer avoids the imposition of a cooperation related penalty where he has agreed to adopt the EU TPD approach and provides on request, in a reasonable manner and within a reasonable time additional information going beyond the EU TPD.

- In addition to these recommendations on documentation related penalties, the Communication on the work of the EU Joint Transfer Pricing Forum (JTPF), published on 14 September 2009 (COM(2009)472), includes a report on transfer pricing related penalties concluding that:
  - it is inappropriate for tax administrations to automatically, without having regard to the facts of the case, impose a penalty merely due to the existence of what turns out to be incorrect transfer pricing; and
  - as far as it regards tax geared penalties on transfer pricing adjustments, that those penalties are reduced commensurately when the transfer pricing adjustment is reduced during a Mutual Agreement Procedure.

State of play, prospects of implementation, perception by services and need for modification

- The EUTPD was monitored in 2009 and it was concluded that although not many companies have officially opted for the EU TPD, it is broadly used in practice. No improvement seemed necessary at that time. Further monitoring will take place by 2015.

5. Competition Policy

There are guidelines in the determination of the amount of fines in case of an infringement of the competition rules. We would like to see more clarity in the determination of the amount of fines so that businesses will not be unduly deterred and that the 'Lisbon Strategy' will be achieved.

We note that Japanese industry made an identical statement in its 2010 recommendations concerning EU competition policy. In February 2011, the Commission Services provided the following reply to the 2010 recommendation:

"In 1998 the European Commission published its first Guidelines for the setting of fines.
These guidelines were revised in 2006. The currently applicable guidelines are designed to increase transparency by clarifying beforehand the consequences of infringing EU competition rules, thereby increasing legal certainty. The European Commission's power to set fines is only broadly defined in the relevant legislation. Council regulation 1/2003 simply determines the maximum fine as 10% of annual turnover. Fining guidelines are therefore necessary to explain how the Commission calculates its fines. However, the primary purpose of the fining policy is to provide a sufficient deterrence preventing firms
from infringing the competition rules. This "signalling effect" is crucial. The European Commission's fining policy - as set out in the guidelines - is intended to convey three main messages: (i.) Do not break the competition rules, (ii.) if you do, stop immediately, and (iii.) once you stopped, do not start again. By publishing the fining guidelines and explaining how it calculates its antitrust fines, the European Commission is behaving in a transparent manner, which benefits industry. Far from being an "undue deterrent" as the Working Group seems to suggest, a competition policy regime with sufficient fining powers is an important element towards fulfilling

the Lisbon Strategy. No major overhaul of the current guidelines is foreseen in the near future. However, the Commission monitors developments closely and may decide to amend the guidelines again, if called for."

The statements made in the 2010 report are still valid. Nevertheless, the Commission services would like to add the following:

The Commission Notice on best practices for the conduct of proceedings concerning Articles 101 and 102 TFEU was published on 20 October 2011.[2] The Notice provides further guidance how the Commission will act in situations where it considers the possibility of imposing fines on companies in ongoing antitrust proceedings. According to the Notice, Statements of Objections will clearly indicate whether the Commission intends to impose fines if the objections should be upheld at the end of the procedure. In such cases, the Statement of Objections will refer to the relevant principles laid down in the 2006 Guidelines on setting fines. Moreover, in the Statement of Objections the Commission will indicate the essential facts and matters of law which may result in the imposition of a fine, e.g. the duration and gravity of the infringement, whether the infringement was committed intentionally or by negligence, and whether there are aggravating and/or attenuating circumstances.

The Commission services are convinced that the explanations provided above – in particular the 2006 Guidelines on fine-setting in combination with the increased transparency provided by the 2011 Best Practices Notice – has eliminated the concerns put forward by Japanese Industry in 2010 and 2011.

6. REACH

Since the entry into force of REACH, many of those tasks, including the provision of information on REACH to companies and the general public, have been transferred to the European Chemicals Agency (ECHA).

1) "We recommend that the EU government takes further actions for education and capacity building in developing countries for compliance with REACH. We also request consideration by the EU government to establishing certain lead-times or grace periods for compliance in cases involving developing country parties in supply chains."

ECHA has signed a Statement of Intent with Japan in June 2011 that covers areas of mutual interest such as scientific collaboration and information exchange, as well as dissemination of public information and exchange of operational best practices. With regard to supply chains, the issues are the same as regards the obligations under REACH for EU as for non-EU countries.

[2] OJ C 308/6, 20.10.2011. The communication may be found at the following URL: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2011:308:0006:0032:EN:PDF

2)"We request the EU to organize consistent implementation of REACH at Community level, especially in notification, based on the ECHA's guidance document under preparation now."

The EU does ensure the coherent and consistent application of EU legislation, and has procedures in place should legislation not be applied accordingly in the EU. The responsibility for enforcement in each EU Member State lies with its own Competent Authorities.

3) "....we wish to express that the technical documents in RoHS should aim at the systems of compliance rather than the data themselves, in order to avoid unreasonable obligation to the industry and to implement legislation practically."

This issue is addressed in Article 16(2) of the RoHS Recast Directive 2011/65/EU (RoHS 2): "Materials, components and EEE on which tests and measurements demonstrating compliance with the requirements of Article 4 have been performed, or which have been assessed, in accordance with harmonised standards, the references of which have been published in the *Official Journal of the European Union*, shall be presumed to comply with the requirements of this Directive."

As the RoHS limit values apply at "homogenous material" level, testing the final product may not be sufficient, relevant or even possible. The evaluation process shall thus consider other types of evidence for the compliance of materials, components and EEE. Examples of documents to be used alone or in combination to demonstrate compliance are:

- Analytical test results;

- Material declarations;

- Supplier declarations.

7. Consumer protection

Although there is a uniform concept in guarantee with household consumer goods in the EU, there still exists significant difference in practice among the Member States especially in the Scandinavian countries. Further harmonisation of regulations on guarantee will help realise an economy of scale, which would benefit consumers. The review of Consumer Acquis (namely the four existing consumer protection Directives comprising (i) Sale of consumer goods and guarantees (99/44/EC), (ii) Unfair contract terms (93/13/EC), (iii) Distance selling (97/7/EC) and (iv) Doorstep selling (85/577/EC)) is being carried out in the context of Consumer Rights Directive. In the new Directive, the following issues should be taken into consideration:

• Guarantee should be limited to 2 years.

• The decision whether to replace with a new product or to repair a defective product should be made by Trader rather than consumers.

• It should be consumers that bear the burden of proof that there was a defect from the beginning after 6 months of purchase even if the guarantee is still valid.

The result of the review of the consumer *acquis* - the new Consumer Rights Directive (2011/83/EU) has now been adopted. However, its scope is now more limited - it applies mainly to distance and off-premises contracts. The existing Directive 99/44/EC on consumer sales and guarantees therefore remains in place. As a result, the rules on guarantees, repair/replacement or burden of proof remain unchanged. The existing rules in Directive 99/44/EC are indeed in line with the recommendation.

8. Environment, Social and Governance (ESG) information disclosure

The European Commission adopted in October 2011 the communication on Corporate Social Responsibility which announces, among others, a legislative measure on the disclosure of social and environmental information by companies. This reiterates the announcement made in April 2011 in the Single Market Act communication, and follows a broad public consultation that concluded in January 2011.

The general support of the Japanese industry for the Commission's new policy on CSR is highly appreciated and the Commission has also taken note of the arguments in favour of EU harmonisation of disclosure requirements.

As the Commission intends to present a legislative proposal in 2012, it will avoid any undue administrative burden on companies, and in particular on small and medium-sized enterprises.

9. Market Surveillance under the New Legislative Framework

We support the general direction the European Commission and the Member States are taking for harmonising market surveillance. This is an important step for fair movement of products. We request the European Commission and the Member States to disclose all the relevant information regarding the progress of this process and the implementation of the market surveillance in each Member State. We also request the European Commission and the Member States to give industry an opportunity for contributing to developing the framework of harmonised market surveillance.

The implementation of the New Legislative Framework has required, and will continue to require for a certain time, that Member States make important administrative and regulatory changes at the national level. Since the adoption of these texts on 9 July 2008, the Commission undertook to accompany Member States in their implementation in order to ensure consistency at the level of the Union, in the field of accreditation and market surveillance as well as import controls. All the Member States undertook an important in-depth examination of their national situations to identify the measures necessary for the implementation, and showed a strong willingness to conform to the Regulation as of January 1st 2010.

However, implementation still remains a work in progress because effective coordination and cooperation between national authorities require, to allow market surveillance and imports control make their effects felt, permanent and continuous work, much more than an action limited in time. Measures which have been and are currently being put in place are therefore established to manage the infrastructures and ensure cooperation over time. The Commission pursues its cooperation with Member States through, in particular, the Senior Officials Group responsible for standardisation and conformity assessment, through a more specialised group

dedicated to market surveillance created especially for this purpose in 2008 and also in coordination with the Committee of the General Product Safety Directive in its field of activities. The Commission also closely works with national experts in various groups of sectoral experts.

To be operational the model provisions of the Decision need to be incorporated into existing Directives when they are next revised. To accelerate this process, on 21 November 2011, the Commission adopted an "Alignment Package" consisting of following directives (which would not otherwise have been revised in the near future):

The sectors concerned are electrical and electronic products, lifts, measuring instruments, civil explosives, pyrotechnic articles and equipment for use in potentially explosive atmospheres.

Market surveillance and customs officers can now better check the safety of products using more effective tools. In addition, Member States can improve the supervision of monitoring bodies that check the conformity of products with EU law, for example ensuring that the CE marking has been properly applied by manufacturers.

Certain provisions (see below) of the nine directives are being aligned with model provisions developed at EU level to overcome divergences in EU law. In the future, producers, importers and distributors will profit from uniform trading conditions. At the same time this process will further improve the safety of products on sale in the EU by strengthening compliance procedures and make it easier to keep non-compliant products off the market.

The changes made to the nine directives on alignment relate to definitions (for example "manufacturer", "making available on the market", "CE marking"), the obligations of economic operators, traceability requirements, conformity assessment bodies and procedures, CE marking and so on.

Obligations for manufacturers, importers and distributors

All products in the nine sectors marketed in the EU must carry a CE conformity marking , which is the manufacturer's declaration that they satisfy all of the essential requirements of the applicable directive(s). Products that are CE marked enjoy free circulation in the European Economic Area (EEA).

Before obtaining the CE mark a manufacturer has to carry out a safety and conformity assessment. The manufacturer has to establish more comprehensive technical documentation for products and must ensure traceability.

Importers must check whether manufacturers have carried out conformity assessment of products correctly and if necessary must carry out random tests themselves.

The nine industry sectors concerned by the alignment

The Commission proposes to align the following directives which all ensure the free movement of goods in the sectors concerned:

- **Low Voltage Directive** : Directive 2006/95/EEC
- **Electromagnetic Compatibility Directive**: Directive 2004/108/EC
- **Simple Pressure Vessels Directive**: Council Directive 2009/105/EC
- **Measuring Instruments Directive** : Directive 2004/22/EC

- **Non-automatic Weighing Instruments Directive**: Directive 2009/23/EC
- **Civil Explosives Directive** : Council Directive 93/15/EEC
- **Pyrotechnic articles** : Directive 2007/23/EC
- **ATEX Directive** : Directive 94/9/EC on equipment and protective systems intended for use in potentially explosive atmospheres
- **Lifts Directive** : Directive 95/16/EC .

For more information:

http://ec.europa.eu/enterprise/policies/single-market-goods/regulatory-policies-common-rules-for-products/new-legislative-framework/index_en.htm

"Life Sciences and Biotechnologies, Healthcare and Well-being"

Working Party B

Recommendations from both European and Japanese industries

General Issues

WP-B / # 01 / EJ to EJ **Enhancement of bio-venture activities**

In both the EU and Japan, bio-venture activities should be enhanced further and dynamically integrated with each other. BRT members call for government support to expand these networks of activities through such measures as bio-conferences or the establishment of cluster centres. It is also necessary to support bioventures financially under the current economic recession.

The Strategy "Innovating for Sustainable Growth" which the European Commission adopted on 13 February 2012 calls for increased investments in research, innovation and skills. This implies ensuring substantial EU and national funding as well as private investment and partnering for bio economy research and innovation, and in particular supporting bio-clusters and Knowledge and Innovation Communities for partnering with the private sector.

The Strategy also invites to set-up a Public-Private Partnership on bio-based products.

Healthcare

WP-B / # 02 / EJ to EJ **Regulatory harmonization and MRA for pharmaceuticals**

The regulatory harmonization and further extension of "Mutual Recognition Agreement" should be proceeded in order to avoid redundant inspections of manufacturing facilities.

To be provided later

WP-B / # 03 / EJ to EJ **Balance between prevention and treatment in healthcare**

Seek balance between prevention and treatment. Thus, confirm inclusion of vaccination programs and include contraception in the scope of public funding.

We regret to inform the honourable members of the BRT that these issues are outside the competences of the European Commission.

WP-B / # 04 / EJ to EJ **Mutual recognition of quality management audit results for medical devices between EU and Japan**

Start a mutual recognition of quality management audit results for lower risk medical devices, e.g. those classified as Class II, ARCD under the Japanese Pharmaceutical Affairs Law, as a first step.

Medical devices are subject to the provisions of the Pharmaceutical Affairs Law, even though their intended mode of action is fundamentally different from pharmaceutical products. This leads to cumbersome and lengthy authorisation procedures that do not necessarily reflect the risks posed by the products concerned.

The agreement reached in 2011 between the EU and Japan under the so-called "paragraph 34" exercise was a step in the right direction. Its principal objective was to align the Japanese standards on the ISO 13485 without additional requirements. We understand that

According to the agreement, mainly for Class II devices QMS audit report in the format recommended by the Global Harmonisation Task Force SG4/N33 R16:2007 are generally valid as part of required documents by PMDA to prove conformity with QMS requirements. Moreover, the results of the QMS audits carried out in Europe by European Notified Bodies which subsidiaries are registered by the MHLW of Japan, can be utilized to simplify the QMS audit process in Japan.

A facilitated access to both markets for medical devices is one of the objectives of the future EU-Japan FTA/EPA. The medical devices sector is included in the non tariff measures identified by the European side for which a solution should be found in the framework of the future FTA/EPA. In this context, the European Commission hopes that the industry on both sides will provide its full support for finding solutions.

WP-B / # 05 / EJ to EJ **Mutual recognition of medical devices product licenses**

See above

WP-B / # 06 / EJ to EJ **Mutual recognition of clinical trial results for medical devices**

See above

Industrial Biotechnology

WP-B / # 07 / EJ to EJ **Strengthening activities for industrial biotechnology**

To enhance the global competitiveness of the bio-based economy through increased cooperation between the EU and Japan, we suggest a number of actions that would strengthen activities in the area of industrial biotechnology

- Develop and implement EU-Japan common R&D programmes and strategies to encourage use of agro-food by-products and wastes

Support collaborative development of technologies to produce biomass based products and sustainable biofuels

Benchmark the EU and Japanese policy strategies and legislation / regulations in order to stimulate the market introduction of bio-based products from

innovative technologies

Set demonstration experiments of bio-based products in different environment model areas in the EU and Japan to assess the possibilities and limitations of the development and use of bio-based products

Encourage the introduction of composting systems to promote the use of biobased products and bio-based polymers

Consider common standards and certification systems for each product category between the EU and Japan to establish a global de facto standard for bio-based products

Set up a common task force to analyse which global incentives can stimulate or support the re-conversion towards a bio-based economy

To be provided later

Plant Protection and Biotechnology

WP-B / # 08 / EJ to EJ **Enhancement of cooperation with industry and academia**

Enhance international cooperation in the development of plants with new beneficial traits / Promotion of industry & academia cooperation.
Potential Research Topics:
Genetic improvement of plant growth and yield to stabilize crop production in variable growth conditions by
· enhancing plant gene discovery and regulatory network research
· studying cellular growth and plant development
· elucidating growth-promoting plant hormones

Under its 7th Research Framework Programme, the EU Commission is providing continuous support to science for plant improvement and plant protection. Particular attention is being paid to addressing challenges caused by increasing biotic and abiotic pressures and their effects on plant growth and productivity.

Projects such as DROPS, ABSTRESS, ADAPTAWHEAT or FRUITBREEDOMICS for example, are supported to advance knowledge on the genetic basis of important traits such as drought tolerance, flowering time variation and disease resistance. They target cereals, legumes, maize and fruit tree crops and are expected to provide the breeding sector with useful pre-breeding material and tools (genetic markers, candidate genes, phenotyping tools) to improve selection efficiency.

More basic and genomics oriented projects such as SPICY, TRITUCEAE GENOME or MEIOSYS will create genomic tools to be further exploited for research and breeding purposes, develop predictive models to link phenol and genotypes or help better understand developmental and reproductive processes.

Project consortia involve both the academic and private sector to enforce the application of results, with EU contribution amounting between EUR 3 and 6 million per project.

Healthcare

WP-B / # 09 / EJ to E **Evaluation of innovation values for pharmaceuticals in prices**

The EU government should reinforce its innovation policy to member states and clarify its healthcare policy, resulting in the appropriate evaluation of the value of pharmaceuticals.
<Background>
In the EU, innovation policy is stated by the Lisbon declaration and the G10 group report indicating the importance of innovation in pharmaceuticals. However, each state operates its own healthcare system in different ways, resulting in gaps in survival rates and the QOL of citizens. Under the current economic recession, prices of pharmaceutical products are targeted as a major tool for medical cost containment. BRT members calls on the EU to clarify its healthcare policy and to discuss and totally improve healthcare situations in member states by securing appropriate healthcare budgets, preventing interference with patient access to new medicines, and considering the proper utilization of healthcare technology assessment.

To be provided later

Plant Protection & Biotechnology

WP-B / # 10 / EJ to E **Shortening review times for products by plant protection & biotechnology**

Shorten review times for new applications/ registrations.

The bio economy encompasses a wide range of established and emerging policy areas at global, EU, national and regional level which result in a complex and sometimes fragmented policy environment. The Strategy *"Innovating for Sustainable Growth: a Bio economy for Europe*" calls for a more informed dialogue, in particular on the role of scientific advancement, and better interaction between existing bio economy-supporting policies at EU and Member States level. In particular, the Strategy asks for the creation of a Bio economy Panel – a policy interaction instrument that will contribute to enhancing synergies and coherence between policies, initiatives and economic sectors related to the bio economy at EU level. This will provide stakeholders with a more coherent policy framework and encourage private investment.

Animal Health

WP-B / # 11 / EJ to E **Introduction of "1-1-1 concept" for all animal health products**

Introduction of 1-1-1 concept for all products (one dossier – one assessment – one decision on marketing authorization).

To be provided later

Recommendations from European industry

Animal Health

WP-B / # 19 / E to EJ **Regulatory harmonization for animal health products**

Further harmonization and streamlining of regulatory requirements for product registration of animal health products.

To be provided later

WP-B / # 20 / E to EJ **Mutual recognition of GMP and marketing authorization for animal health products**

Mutual recognition of European and Japanese marketing authorizations and recognition of GMP certification for veterinary products

To be provided later

WP-B / # 21 / E to E **Responsible use of antibiotics in animal health**

Promote the responsible use of antibiotics in animal health

To be provided later

Recommendations from Japanese industry

Foods

WP-B / # 25 / J to EJ **Promote people's understanding of GMO's based on scientific knowledge by both the governments and the private sectors**

To fulfil people's acceptance of GMO's, governments and private sectors should cooperate in educating people about the efficiency and safety of GMO's based on scientific knowledge, considering world food supply and demand prospects.

EU policy on GMOs continues to be based on a scientific assessment carried out by the European Food Safety Authority. The Commission neither supports nor rejects GMOs but has been active over the last years in promoting dialogue between the opposing views through a series of conferences aimed and allowing an open debate. The Commission supports industries attempts to provide information on the benefits of their products to consumers.
Until now GMOs have not (been perceived as) bring(ing) direct benefits to citizens and the society as a whole. Therefore the debate and public awareness has focused on risks and ethical aspects. GMO developers should better explain the potential benefits of their products for the society, beyond the agronomic dimension, if they want to steer a perception shift in the opinion.

Healthcare

WP-B / # 26 / J to E **Shorten the approval time to register new micro-organism and introduce new technology for producing seasonings and amino acids**

Shortening the approval time needed for registration of new materials and introduction of new technologies which aim for product expansion, cost reduction, environmental concerns or diversification of the fermentation material. Clarification of the approval process is also requested.

To be provided later

"Innovation, Information & Communication Technologies"

Working Party C

Recommendations from both European and Japanese industries

ICT

General remarks

The policy recommendations of EU and Japanese companies in the ICT field are very much welcomed by the EU side. However, the 2011 recommendations of WP A and C, in so far as they touched on ICT matters, seem to focus mainly on the situation in the EU. Moreover, we do not see a direct relation with the recommendations drawn up by the ICT, Telecom services and Telecom Equipment groups of the European Business Council.

DG Information Society holds a regular annual ICT Dialogue with Japan's Ministry of Internal Affairs and Communications, at Vice Ministerial level. It also generally holds a formal meeting with METI on ICT matters once every two years. The meetings cover both policy/regulatory matters (including, where necessary, issues perceived by the industry of both sides) as well as cooperation on policy as well as on ICT research. The main outcomes of the June 2011 ICT Dialogue with MIC were 1. agreement to launch a coordinated call on Future Internet between the EU's Framework Programme 7 of technology research and the programmes of MIC and NICT (the call will be launched this year); and 2. agreement to hold a workshop on cloud computing policy issues and best practices (this is set for April this year). For the next Dialogue with MIC in 2012 a major topic is expected to be cooperation on cyber security issues; and discussions with METI are likely to be focused on ICT research for sustainability (eg energy efficiency). DG Trade, DG Enterprise and the European External Access service are invited to attend. ICT Industry groups in Europe, as well as the EBC in Japan, are consulted beforehand. This year's ICT Dialogue will be the 19th.

WP-C / # 01 / EJ to EJ **Execution of Growth strategy and ICT strategy**

In relation to the implementation of the DAE, or Digital Agenda for Europe (and publication on the web) the EC would like to draw the attention of the EU-Japan Business Council members to the 2011 Implementation report on the DAE of December 2011 (http://ec.europa.eu/information_society/digital-agenda/documents/dae_annual_report_2011.pdf) which details progress made so far, as well as the Digital Agenda Scoreboard of 2011 (http://ec.europa.eu/information_society/digital-agenda/scoreboard/index_en.htm).

WP-C / # 02 / EJ to EJ **Deployment of Next Generation Broadband Networks**

(1) Regulations should provide necessary legal certainty for investors. Technologies should be able to evolve on their own merits – innovation and investment decisions should not be hampered by technology-prescriptive regulations.
(2) Both Authorities should provide the necessary stimuli to industry to encourage the provision of high-speed fixed or mobile broadband services in the areas where deployment by private sector investment is difficult. (such as less-populated areas).
(3) To promote the use of ICT, both Authorities should enhance the social benefits of the next generation broadband network by encouraging education, healthcare and other government services.
(4) To permit a more efficient use of the spectrum, both Authorities should free up as many frequencies as possible for use by mobile broadband. Moreover, both Authorities should strive for a harmonised use of the spectrum to ensure economies of scale and thereby lower service prices incurred by consume.

In relation to the need for providing legal certainty for investors, stimuli for the provision of services in less populated areas, promotion of use, and more efficient use of spectrum, the EC would like to highlight a number of actions at the EU level which are ongoing:

- a proposal for a "Connecting Europe Facility", which would include funding for digital networks and services infrastructure;
- review of the State Aid Guidelines on Broadband Deployment;
- improvement of Member State national broadband plans;
- development of the Cohesion Policy and Rural Development proposals for the period 2014-2020, which should include a focus on support for high speed broadband infrastructure in less developed regions;
- the European Radio Spectrum Policy Programme was adopted in November 2011 by the Council and the European parliament, for implementation by the Member States.

WP-C / # 03 / EJ to EJ **Using ICT to address social challenges**

To promote ICT use by the public sector, both Authorities should prioritise budget allocation for innovative ICT projects in areas such as healthcare, education, central and local government. Where appropriate, laws and rules which could impede advanced ICT usage should be deregulated.

As regards the promotion of ICT use by the public sector in areas such as healthcare, e-government, education etc, the EC would draw attention to the following: examples of the wide range of activities ongoing at EU level:

- in the area of healthcare, the Commission is negotiating two pilot projects that will enable patients to have access to their health records, as part of an effort to equip citizens with online access to their medical health data and achieve widespread deployment of telemedicine;
- in relation to e-government, in the second quarter of 2012 the Commission will propose a single instrument on eSignatures, eIdentity and eAuthentication;

– As for education, the Commission will propose EU-wide indicators of digital competences and media literacy in 2012 and will develop tools to recognise and identify competences of ICT practitioners and users.

WP-C / # 04 / EJ to EJ **Harmonisation of regulations for cloud computing usage in the EU and Japan**

(1) Given the importance of data portability and interoperability in cloud computing and to ensure the private sector can develop innovative cross-industry applications and services, both Authorities should review regulations prohibiting applications from using cloud computing. The European Commission should coordinate with relevant authorities in the Member-States to ensure there is a seamless deployment across the whole EU.
(2) The EU and Japanese Authorities should begin a cloud computing dialogue to harmonise regulations on cloud computing and thereby facilitate cross border transactions and international data transfers within the EU and with Japan while enhancing the balance of privacy, data protection and the free flow of information.

The European Commission will publish a strategy on stimulating cloud computing in the European digital single market in 2012. In the meantime, the EU and Japan will hold a workshop in April 2012 in order to exchange views and analyse issues, taking into account the importance of a balanced approach for issues such as building trust of consumers and ensuring protection of privacy so as to promote cross-border flow of information.

WP-C / # 05 / EJ to EJ **ITA maintenance and expansion**

(1) Both Authorities should ensure that the current ITA is reviewed at the earliest opportunity and that additional electronic goods should be granted duty-free status in addition to those that already have that status. The broadest possible expansion (including large portions of Chapters 84, 85 and 90) of the scope is needed so that current and future innovative technological developments should not cause product classification uncertainties. Such effort would also be realized through successful negotiation and agreement on the Electronics/Electrical sectoral initiative proposed in the WTO/NAMA. The EU should implement the WTO panel in the ITA dispute by the end of June 2011 to address new convergence technology ITA products being reclassified as dutiable.
(2) The geographical coverage of the ITA should be expanded by encouraging more countries to join the ITA and the electronics/electrical sectoral initiative. Membership should be promoted as a means of boosting efficiency and productivity, improving the investment climate, helping bridge the digital divide and enabling the move to a more energy-efficient and climate-friendly society.
(3) Effective mechanisms (such as fora for industry to explain state of the art technology to government) are needed to ensure the ITA is kept up to date and reflects technological developments.

(1) The EU fully supports the statement that the Information Technology Agreement (ITA) should be renegotiated and its scope expanded in view of the recent technological evolution and convergence between IT and non-IT products. The EU

would like to stress that it has submitted a proposal along these lines to the ITA committee, a proposal that also includes disciplines on non-tariff barriers. The EU would appreciate it if Japan could support this proposal and thus speed up the negotiation process.

The EU would like to underline that it implemented the findings of the WTO Panel report on the ITA by the end of the reasonable period of time agreed with the complainants (end of June 2011).

(2) The EU supports the statement that the geographical coverage of the ITA should be expanded. Such an item is part of the EU proposal for a review of the Agreement.

(3) The EU agrees that effective mechanisms for a regular update of the ITA, in light of technological evolution, should be used, in order to avoid future disputes in the WTO. In this respect, the EU would like to refer to paragraph 3 of the Annex to the Ministerial Declaration on Trade in Information Technology products and the EU proposal for a review of the ITA.

WP-C / # 06 / EJ to EJ **Fundamental Review of the Copyright Levy System and the Compensation System for Audio and Video Private Copying**

(1) The EU and Japan should cooperate / have a dialogue to review fundamentally the compensation system for private copying and thereby promote the lawful use of digital content.
(2) Any review should consider, in a comprehensive manner, methods – including new content distribution practices – available to secure compensation for rights' holders and creators from private copying. The goal should be to enable the establishment of a system which is transparent, fair and equitable to consumers, rights' holders, service and equipment providers, etc.
(3) The EU and Member-State Authorities should ensure that compensation for private copying remains a priority issue for the wider copyright debate on the European digital economy agenda. EU-level action is required if transparency and legal certainty is to be achieved.
(4) The forthcoming Directive on Collective Rights Management should address copyright levies once and for all.

EU Member States enjoy a large discretion on how to provide right-holders with a fair compensation for acts of private copying. In view of the variety of national practices, the Commission has been working with all relevant stakeholders to consider a more coherent approach. In the Communication of 24 May 2011 on a single market for intellectual property (the "IPR Communication"), the Commission announced that concerted effort on all sides to resolve outstanding issues should lay the ground for comprehensive legislative action at EU level by 2012. Private copying levies will thus not be addressed in the forthcoming legislative instrument on collective rights management.

In the IPR Communication, the Commission stated that the proper functioning of the internal market requires conciliation of private copying levies with the free movements of goods. In order to achieve this, the Commission undertook to appoint

a high level mediator to open a dialogue with stakeholders (previous stakeholders' dialogue held in 2008-2010 had failed) and explore possible approaches with a view to harmonising the methodology used to impose levies, improving the administration of levies and the setting of tariff rates.

On 24 November 2011, Commissioner Barnier announced that Mr. Antonio Vitorino, former EU Commissioner, had been asked to act as the mediator on private copying levies. Preparatory work for the dialogue is ongoing; the dialogue will end by the summer.

The CJEU in its recent decisions provided for important indications on the application of private copying levies. In Case C-467/08 (Padawan v SGAE, 21/10/2010) the CJEU clarified that fair compensation should compensate for the harm suffered by the right holder as a result of the unauthorised reproduction of his/her work. Given the practical difficulties in identifying private users, the CJEU considered private copying levies to be a valid form of providing for fair compensation. The CJEU also stated, however, that private copying levies must not be applied to digital reproduction equipment, devices and media purchased for purposes clearly unrelated to private copying (e.g. for professional use by professional users). In Case C-462/09 (Stichting de Thuiskopie vs Opus GmbH, 16/6/2011) the CJEU decided that Member States that have introduced an exception for private copying are obliged to ensure effective recovery of the fair compensation intended to compensate the authors.

Japan and the EU pursue their dialogue on intellectual property rights; the most recent dialogue took place in Brussels in October 2011.

WP-C / # 07 / EJ to EJ **Balancing of trade facilitation and security**

Both Authorities should cooperate and lead the international harmonisation of rules and operations to achieve efficient public and private sector operations, balance trade facilitation and the assurance of safety and security. Both Authorities should drive aggressively an initiative to remove barriers to realising a balance between trade facilitation and the ensure security. In particular:

(1) Security regulations that have been tightened despite the existence of the MRA on AEOs should be examined and considered for deregulation.
(2) The EU and Japan should consider adopting an international standard for security regulations (like the ICAO) as although companies have to comply with international standards such as UL or IEC, the implementation of current regulations varies between countries.

We would like to point out that the EU and Japan already act to balance trade facilitation and security. The Customs Cooperation and Mutual Assistance Agreement between the EU and Japan contains a provision (article 9) on developing and strengthening cooperation on topics of common interest with a view to facilitating discussions on customs matters in the framework of relevant international organisations, such as the WCO and the WTO.

WP-C / # 08 / EJ to E **Applying reduced VAT rate to e-Books**

To end the unnecessary discrimination between e-Books and paper books, e-Books should also be liable for the reduced VAT rate applied in the EU to "culturally-worthy" items and the rate charged should not exceed the rate applied to printed publications.

Please see the Communication on the Future of VAT, presented by the Commission on 6 December 2011 [COM(2011)851].

This Communication has a dual purpose. Firstly, it sets out the fundamental characteristics that must underline a new VAT regime. Secondly, it defines the priority actions needed to create a simpler, more efficient and more robust VAT system in the EU.

The Communication also mentions a review of the VAT rates structure as a priority action. This review will be based on 3 objective criteria, the 3rd one being that "similar goods and services should be subject to the same VAT rate and that progress in technology should be taken into account in this respect, so that the challenges of convergence between the online and physical environment is addressed."

This broad review will be launched this year and should be followed by a legislative proposal by the end of 2013 (see point 5.2.2 of the Communication).

INNOVATION IN GENERAL

WP-C / # 9 / EJ to EJ **Cooperation between the EU and Japan on 21st Century societal challenges**

(1) Both Authorities should support flagship projects and innovative solutions to common societal challenges through deregulation and inviting investment and expertise from EU and Japanese industry.
(2) An EU-Japan dialogue should be established to evaluate how best to stimulate research and innovation in general and how to ensure they benefit consumers and industry. Best practice from around the world (such as allowing venture capital to be used for investment in innovation or entrepreneurship) should be studied and adopted.
(3) The EU and Member-States should create European Innovation Partnerships for smart cities, water efficient Europe, sustainable supply of non-energy raw materials for a modern society, smart mobility for European citizens and industry, agricultural productivity and sustainability.

The 'Agreement between the European Community and the Government of Japan on cooperation in science and technology' is now in force, and the first meeting was held in Tokyo on 16 June 2011, co-chaired on the Commission side by RTD Director General Robert-Jan Smits. The meeting discussed, inter alia, research and innovation policies on both sides and proposed a number of areas for developing initiatives between the EU and Japan. These include critical raw materials, low carbon society (renewable energies), healthy ageing, environment, transport, infrastructures and ICT. The regular meetings under this agreement will provide a forum for discussion and prioritisation of research and innovation initiatives between the EU and Japan.

WP-C / # 10 / EJ to EJ **Continuous Investment for Innovation (Education, test-bed project, Government procurement)**

Given current budgetary constraints it is vital that both Authorities mobilise all necessary policy tools to ensure smart spending by the public sector and that they use public procurement as an instrument for creating and harnessing innovation.
The EU, Member-States and Japan should allocate strategic budgets for innovation investment particularly on education in science, technology, engineering and mathematics fields, and on developing competent human resources in S&T, R&D and test-bed projects.

The European Commission holds the view that public procurement constitutes an important demand for innovations in many market areas. The Commission has strengthened measures for a better use of public procurement of innovation since its "Common Approach"-Communication (COM(2005) 488). Notably its Lead Market Initiative has yielded valuable information also in this regard. In 2011, the Commission has reinforced the innovation aspect in its proposed revision of the public procurement directive. Considerations like lifecycle costing should be particularly attractive in view of the sustainability of budgets. The practical implications are currently being illustrated by projects in various EU funding projects that target public procurers in various areas of innovation potential. The Commission has proposed to expand the subsidisation of such projects in the next research and innovation framework programme of the EU (Horizon 2020). Furthermore, just as in companies the adoption of new process technology often needs to be accompanied by organisational changes, the procurement of innovative solutions by public authorities may depend on public sector innovation, which the Commission has started to look into.

WP-C / # 11 / EJ to EJ **Incentives to drive innovation at Private sectors**

To facilitate private sector's role as an engine for growth, the Authorities should create better conditions for businesses be they domestic/foreign, large or small. In particular, given on-going technological developments, the Authorities in the EU and Japan should periodically review rules and regulations, to reform outdated rules and regulations or harmonise others within the EU and Japan thereby creating a bigger market and incentivising the commercialisation of new products and services.
The scope of tax credits for R&D should be expanded to encourage private sector investment in R&D.

EU regulations and directives often include review clauses. In particular, the New Legislative Framework has been proposed by the Commission in 2011. Many other examples can be found in EU sector policies. Impact assessments of legislative proposals shall include the consideration of their impact on innovation. Specifically in the context of innovation policy, the Lead Market Initiative has over the past three years illustrated the usefulness of policy co-ordination for innovation-friendliness, notably in view of their technology-neutrality and the significance of international standardisation in this regard. As part of its Innovation Union endeavour, the EC has proposed to screen the regulatory framework in key areas, notably in areas linked to eco-innovation and possible integrated partnerships.

WP-C / # 12 / EJ to EJ **Continuous investment for R&D Infrastructure**

We recommend the EU and Japan for continuous investment on R&D Infrastructures in national laboratories and universities.

To be provided later

WP-C / # 13 / EJ to EJ **Business cooperation between EU and Japanese clusters**

Strengthen business cooperation between EU and Japanese clusters

To be provided later

INNOVATION IN AERONAUTICS, SPACE AND DEFENCE

Aeronautics

WP-C / # 14 / EJ to EJ **Government-Led Industrial Cooperation in Aerospace (Civil and Defence)**

The Authorities of Japan and the EU should accelerate work to significantly upgrade the scale of EU-Japan industrial cooperation in both civil and defence aeronautics and space, stimulated by government funding.

The recommendation is directed the "authorities of Japan and the EU". In this respect, it needs to be noted that the EU does not support international research cooperation activities in defence aeronautics. The European Commission (DG Research and Innovation) only funds civil aeronautics research. Therefore, we understand that the defence part of the comment is directed to the EU Member States.

WP-C / # 15 / EJ to EJ **Environmental Issues in Aeronautics Technology**

The Authorities of Japan and Europe should establish broad bilateral cooperation on environmental issues.
Europe and Japan support mostly separate research programmes on environmental issues, from noise to emissions. One joint effort is part of a small French-Japanese programme on high speed aeronautics technologies. We believe that the eco-technology at all aircraft speeds is one of the fields where further cooperation between Europe and Japan could yield significant cooperation and business opportunities

In 2011 DG Research & Innovation and the Japanese Ministry METI agreed to launch a joint call for proposals for research activities of mutual interest addressing environmentally friendly future air transport and related technologies. It is envisaged to co-fund those proposals by the 7th Framework Programme and METI in 2012, which successfully passed the joint evaluation process by independent experts and are shortlisted for funding.

WP-C / # 16 / EJ to EJ **Cooperation in aircraft certification**

Establish cooperation between Japanese and European aircraft certification authorities.

The European Aviation Safety Agency (EASA) has been cooperating actively with JCAB since July 2006 for the acceptance of European designed aircraft by JCAB. The working arrangement between the two authorities was extended in November 2010 to facilitate the acceptance of the Mitsubishi Regional Jet. Usually, such forms of cooperation also cater for the protection of business secrets/IPRs/confidential information (e.g. the subject matter of item #20 on the paper containing recommendations). The full text of the arrangement with JCAB is publicly available information on the web-site of EASA (as are by the way all working arrangements concluded by the Agency on the basis of EU law - Reg. 216/2008, art. 27).

Space

WP-C / # 17 / EJ to EJ **Civil Purpose Satellite Technology**

In the civil satellite technology field, Japanese space Authorities (at Cabinet level) and European space Authorities (EU Commission, European Space Agency, and Europe's national space agencies) should establish a common mechanism for a formal and permanent dialogue with the purpose of identifying further mutually beneficial subjects of cooperation.

For Galileo, there is no interest at the moment to set up a formal and permanent dialogue, when needed issues are discussed in ad-hoc meetings. If something formal is ever to be set up, it could be a space dialogue and then satellite navigation issues could be covered under that umbrella.

WP-C / # 18 / EJ to EJ **Defence Purpose Satellite Technology**

The Authorities of Japan and EU Member States should establish a regular dialogue aimed at sharing experience on defence purpose satellites.

To be provided later

WP-C / # 19 / EJ to EJ **Mutual Backup of Government Satellite Launches**

Japanese and EU space authorities should bring about a mutual backup cooperation scheme of all government launches using their respective satellite launcher fleets.

To be provided later

Defence

WP-C / # 20 / EJ to EJ **Exchange and Protection of Classified Information**

Japan and European countries should make official agreements for government and industry to exchange and protect classified information pertaining to joint development. European and Japanese defence industries have many complementarities and could, if they were allowed to fully cooperate, jointly develops high performance and cost efficient

The recommendation is directed to " (the) European countries.." and not to the Commission which is correct .

Recommendations from European industry

INNOVATION IN AERONAUTICS, SPACE AND DEFENCE

Space Equipment

WP-C / # 24 / E to EJ **Approval of Satellite Launch Service Providers**

To be provided later

WP-C / # 25 / E to EJ **Legitimate use of Private Finance Initiative projects**

To be provided later

Defence

WP-C / # 27 / E to EJ **Internationally recognized procurement processes for defence equipment and services**

The following should be applied to all defence procurement processes. (1) Clear statements of requirements, communication of any changes (2) Advising of timelines and adherence to them(3) Notice of evaluation criteria and the weightings given each criterion(4) Acceptance of English-language documentation (5) Application of NATO standards (6) Full public disclosure of the basis of awards (7) Opportunities to appeal award decisions, without the requirement to withdraw from the competition.

Purchases of goods and services in the defence and security sectors are often of a sensitive nature. This results in specific requirements, particularly in the fields of security of supply and security of information.

The Directive 2009/81 on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security, adopted in July 2009, provides for better coordination of award procedures, for instance for contracts regarding logistics services, transportation and warehousing, while reflecting the Union's overall approach to security in line with changes in the strategic environment. The Directive, to be transposed by August 2011, states that contracting authorities/entities shall treat economic operators equally and in a non-discriminatory manner and shall act in a transparent way. Member States also agreed they should press for increasingly open

markets, and that partner countries should also demonstrate openness, on the basis of internationally-agreed rules, in particular as concerns open and fair competition. The European Commission noted some delays in the transposition in some Member States and remains optimistic on a transposition by all Member States in early 2012.

In November 2011, the European Commission announced the establishment of a defence policy task force. The task force has the following four key missions: ensure coherence on security and defence policy initiatives; trigger a debate in industry on determining the strategic areas where Europe needs to keep an industrial base and thereby retain strategic autonomy; exploit synergies between the security and defence industries; ensure transposition into Member State legislation of relevant EU legislation. The task force includes all the relevant Commission directorates general and will work closely with the European Defence Agency and the European External Action Service. Cooperation with the industry will also be considered.

Recommendations from Japanese industry

ICT

WP-C / # 30 / J to E **International Transfer of Personal Data in the Cloud Computing Era**

The international data transfer regime between EU and Japan should be streamlined so as to develop a better environment for businesses. The two governments should then launch the adequacy finding procedure under the EU directive as soon as feasible.

"The EC this January proposed a comprehensive reform of the EU's 1995 data protection rules to strengthen online privacy rights and boost the digital economy, recognizing that technological progress and globalization have profoundly changed the way data is collected, accessed and used. The 27 EU Member States have implemented the 1995 rules differently, resulting in divergences in enforcement. A single law will reduce the current fragmentation and costly administrative burdens, leading to savings for businesses, and will help reinforce consumer confidence in online services. Binding corporate rules are one tool that can be used to adequately protect personal data when it is transferred or processed outside the EU, for example in the cloud environment. Businesses can adopt these rules voluntarily and they can be used for transfers of data between companies that are part of the same corporate group. The EC's proposal will simplify binding corporate rules and streamline the approval process."

"Financial Services, Accounting and Tax Issues"

Working Party D

Recommendations to the EU and Japan

Financial Services

WP-D / #01 / EJ to EJ **Progress in the financial market reform since the financial crisis**

In response to the global financial crisis, the G20 countries have agreed to the common principles for financial market reform, which are: (1) strengthening transparency and accountability, (2) enhancing sound regulation, (3) promoting integrity in financial markets, (4) reinforcing international cooperation, and (5) reforming international financial institutions. The G20 countries are now taking actions for their implementation. Since the G20 summit in November 2010 in Seoul, the process for these regulatory reforms has moved from the phase of the consideration to implementation.
Specifically, under the G20 framework, the Basel Committee of Banking Supervision (BCBS) published the rule book for Basel III in December 2010, which stipulates the details for the banking regulation and which is to be implemented internationally. Each country shall carry out procedures in preparing its domestic rules as the next phase for application of Basel III starting from January 2013.
Regarding Systemically Important Financial Institutions (SIFIs), the concrete regulations for SIFIs are now being built at the global level following the adoption of the proposal by the Financial Stability Board (FSB) at the G20 summit in Seoul. Global SIFIs (G-SIFIs) will be specified in 2011. In consideration that G-SIFIs are not only large in scale but also considered to be important in the markets and to have significant impact on society and the economy as a whole, G-SIFIs will be required to have higher capacity for loss absorptions than other institutions, and the framework for those orderly resolutions will be built.
We agree in general that these financial reforms will stabilize the financial system and enhance the transparency and accountability of financial institutions, financial markets, and financial products, while ensuring their fairness and integrity. The stabilization of financial markets and the financial system is important for market users including companies that raise capital.
However, given that measuring systemic risks is very difficult and the acquisition of consistent data across countries and industries would be difficult as well, the criteria (or benchmarks) to measure the "SIFIness" should be cautiously set out. In addition, when the FSB specifies SIFIs it would need to mitigate moral I enclose our last contribution for ease of reference hazard and to avoid an excessively politicized process. Considerations of financial reforms with systemic risks should be delivered through the framework of comprehensive and macro-prudential supervision.

Action taken and state of play

In Cannes in November 2011 all G20 Parties reaffirmed their commitment to work together with a view to reinvigorating economic growth, creating jobs, ensuring financial stability, promoting social inclusion and making globalization serve the needs of the people.

The European Commission is committed to endorse all the agreements reached at the G20 level and ensure their timely and consistent implementation. The European

Commission considers that the implementation of the reforms should be fully consistent with the objective of enhanced financial stability and should not negatively impact economic activities. The European Commission also calls on all other jurisdictions, which have not yet done so, to take the appropriate steps to meet our shared G20 commitments.

In 2011, the European Commission put forward twenty-nine legislative proposals including two very significant packages revamping the regulation of banks and capital markets. These new proposed rules are going through the legislative process. The European Union's goal is to ensure safe financial institutions, efficient and resilient markets and appropriate consumer protection. All new legislation should be in force by 2013.

In July 2011, the European Commission adopted a proposal to revise the Capital Requirements Directive (CRD) in order to implement the “Basel III” agreement, which significantly increases the levels of capital which banks and investment firms must hold to cover their risk-weighted assets. The proposal – involving a combined Regulation and Directive package - includes provisions to improve risk control and oversight as well as enhance supervisory review of risk governance in financial institutions. We consider the implementation of the Basel III framework by the G20 countries crucial for maintaining a global level playing field.

The FSB published in November 2011 an initial list of Global systemically important financial institutions (G-SIFIs). G-SIFIs will be submitted to strengthened supervision, a new international standard for resolution regimes and from 2016 additional capital requirements. The European Commission strongly supports the extension of the SIFI policy framework to all SIFIs, including domestic systemically important banks (D-SIBs). We also support the development of the blueprint for the Peer Review Council (PRC).

Improved stability of financial institutions will be achieved through effective supervision. The European Supervisory Authorities (ESAs), set up in January 2011, coordinate the work of national supervisors, ensure coherent supervisory practices and contribute to the establishment of a common rulebook for financial institutions. The publication by the European Banking Authority of the results of the 2011 EU-wide stress tests, based on stricter requirements than in 2010, better coordination and peer review and a significantly higher degree of transparency, provided the right incentives for banks to restructure their operations, strengthen their capital base, and regain viability.

The European Commission considers that the 2012 G20 work programme needs to continue to have a strong focus on financial market reforms, including: (i) the full, timely and consistent implementation of the G20 commitments; (ii) the modalities of the extension of the G-SIBs framework to all systemic institutions; (iii) strengthened oversight, supervision and regulation of the shadow banking system; (iv) reinforced and consistent supervision of market infrastructures; (v) reduction of overreliance on credit ratings agencies while strengthening their regulation and supervision; (vi) implementation of the proposals to strengthen the FSB's governance and resources; (vii) assessing progress towards establishing International Financial Reporting Standards. Our regulatory focus for 2012 will be on consumers.

WP-D / # 02 / EJ to EJ **Issues to be mindful of when proceeding with reform**

We shall, at the same time, point out that there are several issues we should bear in mind as we proceed with regulatory reform. Innovation and appropriate risk appetite are important and necessary for financial actors to perform their role of financing economic growth. A careful balance must be struck between innovativeness, risk appetite and regulation. Also we should bear in mind that strengthening the regulation on large financial institutions could result in distorting the conditions for a level playing field and could end up creating "too-big-to-fail" institutions.

One must not give in to the temptation of a "one size fits all" solution. The new regulatory framework should take into account the circumstances that are specific to each country and/or the variety of financial players, and respect their business models and their time horizons. The different economics of financial activities should be appropriately reflected in the new regulatory regimes. Failing to do so would lead to herd behaviour and heightened volatility rather than to stability and transparency.

We also have to recognize that maintaining liquidity in the secondary market is important. One of the most serious problems in the financial crisis was the lack of liquidity in the secondary market. Although regulatory reform should move forward in order to prevent the next financial crisis, we also have to be mindful of preventing a lack of liquidity in the secondary market. Asian countries are expected to be the driver of economic growth after the financial crisis. In these countries, the role of capital markets is still limited and their financial system is still based on the traditional banking system. If low liquidity in the secondary market and credit restraint due to the capital requirements for banks should happen in such countries, corporate finance could face constraints from both the capital market and the banking system, and this could result in a negative impact on economic activities and growth.

Even though the financial industry is one of the most globalized industries, we should still bear in mind that regulation and practices vary greatly from country to country, particularly for small and mid-sized financial institutions.

According to "Basel III", investments in the capital instruments of banking, financial and insurance entities would be deducted. However, for countries where reciprocal cross holdings in the capital between financial institutions are prevalent, sensitive handling such as giving an adequate transition period would be necessary. And regulatory capital instruments such as contingent capital or debt instruments with bail-in clauses designed by financial regulatory authorities need to be introduced with sufficient consideration for market capacity. Furthermore tightening regulation on shadow banking, led by the FSB, needs to fully consider the role of the shadow banks to the real economy and to take measures not to disturb bona fide business activities.

When regulation is discussed in the global context, the characteristics of each country and region should be fully considered. We believe that we should build harmonized regulations through multilateral discussions on a global basis. Among other things, we should take fully into account the impact on the economy and the outcome of the combined impact of several individual regulations when they are concurrently implemented.

Action taken and state of play

According to better regulation principles, the proposals submitted by the European Commission are being prepared after stakeholders' consultation and impact assessments. The cumulative effects of the various measures on the financial sector as well as on the real economy are fully taken into account. In this context, the outcome of the work already underway in the Financial Stability Board and the Basel Committee on the cumulative effects of financial sector reform is also fully taken into account.

Regulation of financial services needs to be complemented by an ambitious reform agenda for growth. The European Commission will actively contribute and push for solutions that are consistent with the Single European Market.

The overall purpose of Basel III is to have a more resilient, better capitalised, banking system capable of absorbing economic shocks as opposed to multiplying economic shocks. The CRD IV proposal of July 2011 aims at introducing Basel III into European legislation and follows the Basel Agreement very closely. The European Commission proposal takes into consideration the diverse range of banks that the rules are meant to apply to. It is accompanied by a thorough impact assessment. The latter shows that the impact of Basel III should not be more severe on lending to SMEs than for other stakeholders. Under Basel II and existing CRD rules, institutions applying the standardised approach can benefit from a preferential risk weight (75%) for their exposures to SMEs. The Commission proposes to continue this preferential treatment.

In addition, the Commission will look at possible structural measures for the banking sector. To this end, the Commission set up a high level group of experts to consider this issue. The group is headed by Erkki Liikanen, Governor of Finland's national bank. The Group will look at the work carried out in the EU and elsewhere.

Unregulated shadow banking could undermine the Basel III reform. The European Commission closely follows the work within the FSB at technical level on shadow banking. In addition, a working group inside the Financial Services Committee has been created and is contributing to the international work stream. The ECB has been conducting in summer 2011 a survey on shadow banking in the Eurozone to be published early 2012. The European Commission will publish a communication early 2012. In this communication, we will try to clarify what are the important shadow banking issues, outline what are the steps we have already taken and make a first list of our priorities; this will be the first step of a process that should lead to legislative proposals around the end of 2012 or beginning of 2013.

The European Commission will organise a conference on shadow banking in Brussels on 27 April 2012 to further consult stakeholders on this issue. The Conference will address most of the issues covered by the work stream: banking regulation and securitisation, investment funds, money markets funds, securities lending and repos.

The European Commission supports discussions on a global and bilateral basis. Building on its achievements, G20 Parties have agreed to reform the FSB to improve its capacity to coordinate and monitor our financial regulation agenda. We also support the Mexican G20 Presidency focus on the perspective of Emerging Markets and Developing Economies (EMDEs) and the promotion of a guided implementation of financial sector reforms in EMDEs.

Accounting

WP-D / # 03 / EJ to EJ **Accounting Issues in EU and Japan**

Working Party D (previously Working Party 2) has recommended enhancement of the governance of the accounting standard setting bodies and the convergence of accounting standards. The Financial Stability Board (FSB) is going to undertake a strategic review of

the policy development work of international standard setting bodies, and the IASB has established an external Monitoring Board, members of which include the International Organization of Securities Commissions (IOSCO), the European Commission, the US Securities and Exchange Commission, and Japan's Financial Services Agency. In addition, IASB and FASB have established the Financial Crisis Advisory Group (FCAG), which is comprised of senior leaders with broad international experience in financial markets. FCAG will advise the IASB and FASB on the standard-setting implications of the global financial crisis and on potential changes to the global regulatory environment. Since its inception, FCAG has announced a wide-ranged report on the activities of the Accounting Standard Board. We support these trends and look forward to further developments. We also support the progress towards the introduction of IFRS in Japan and look forward to further discussions on convergence.

While the purpose of financial accounting is to provide financial information to a company's outside stakeholders such as shareholders and creditors, we strongly point out that the view of a company's management is also important when setting standards. Changes in accounting standards have impact on corporate activities and thus on the economy. We believe that net income with a recycling arrangement is useful as accounting information. Accounting costs affect the behaviour of enterprises. If items not recycled such as actuarial gains and losses in pension accounting are expanded, and thus profit and loss not reflected in net income are expanded too, we are concerned that underlying business activities such as cost management and selling price formation could be disrupted.

IASB is in the process of revising its financial instrument accounting standard and we support the approach to recognize the net unrealized gain on available-for sale securities as other comprehensive income (OCI). However, it is also proposed that if the net unrealized gain is recognized as OCI, the dividend is recognized as net income but the realized gain is recognized as OCI, not as net income. We cannot agree with this approach.

Net realized income has been described by some as a kind of income manipulation. We believe, however, that management is able to send out its message by the sale of the securities. Thus, recognizing the net realized income as net income gives more useful accounting information. For example, on the measurement of assets and liability in insurance companies which IASB calls one of its priority projects, assets held by insurers are managed consistently with the asset liability management and the risk management of the company in order to back insurance liabilities and to meet insurers' commitments toward policyholders and not in the interest only of the shareholders (and so not for "managing earnings" over time). Furthermore, the removing of the available for sale (AFS) category is inconsistent with the business model approach on which IFRS 9 is based: the long term business model of insurance should be recognized through the AFS.

As part of the process to strengthen immediate recognition in the accounting standards of employee benefits, the actuarial gains and losses may be recognized immediately upon accrual as OCI. The immediate recognition of actuarial gains or losses coming from short term financial market fluctuations could cause pension plans, which are long term promises between employers and participants, to give excessive fluctuation to net income. We support the approach to recognize actuarial gains and losses as OCI and not as net income. On the other hand, we believe actuarial gains and losses should be recycled for the above-mentioned reason.

We ask IASB to discuss revenue recognition criteria with careful consideration of the actual business practices in countries around the world. It is necessary to recognize the possibility that changing the accounting standards would affect business practices. We believe that already-established accounting practices should not be overruled unless the accounting standard reform is truly necessary, such as when concrete problems that may hinder investor's decision-making already exist.

The IASB and the FASB published the exposure draft (ED) in August 2010 in which they proposed drastic revisions. The exposure draft proposes a single model for operating and finance leases by eliminating separate treatments.
However, we point out that this rule that treat operating and finance leases together has quite a few challenges since there is plenty of room for arbitrariness in that it is necessary to carry operating leases on the balance sheet and to revaluate the estimate of the leasing period or variable lease fees regularly.

We call for an application that adequately reflects business practices.
Moreover, if the leasing accounting standard is applied to the entire contracts in the case in which the contracts of leases and services are not separable, even elements other than utilization rights of an underlying asset, such as "services offered to help an original asset work appropriately" or " added value offered through the transaction concerned" would need to be recorded on the balance sheet. These elements might not only be corresponding to the definition of the lease, but also could lead to the transformation of the concept of the asset and the liability of financial statements of such an element. We request accounting treatment that reflects the business realities appropriately.
With regards to the IASB' s financial statement presentation project, in addition to OCI issues and the removing of the two separate statements (income statement and statement of comprehensive income), we are concerned about the requirement for the use of direct method in cash flow statement. Users of financial statements are able to acquire sufficient useful information from disclosures with the indirect method. Based on the fact that companies will incur large amounts of costs, we do not see any overriding benefit coming from the requirement of direct method.

Action taken and state of play

The European Commission attaches great importance to the International Accounting Standards Board (IASB) governance and to the global convergence of accounting standards. More and more jurisdictions are in the process of ensuring convergence between their national Generally Accepted Accounting Principles (GAAP) and IFRS or adopting IFRS directly. Our preference is for adoption of IFRS rather than gradual convergence. We encourage Japan to take a positive decision regarding adoption of IFRS as soon as possible.

We are concerned that if major economies like the US or Japan do not show their strong commitment towards full adoption of IFRS, it may be difficult to establish IFRS as the global accounting language.

The European Commission follows very closely developments in the area of IASB governance. The implications of the global financial crisis on standard-setting led to important steps forward in the governance of the IASB. We are involved in the IASB governance working group of the Monitoring Board established in early 2009, which is chaired by Mr. Kono, Vice-Commissioner of the Japan FSA. The aim is to publish proposals early 2012.

The European Commission shares the view that many of the IFRS standards under development have a broader economic impact. The IASB thus needs to develop high quality standards that need to be understandable and practicable. In addition, we expect standard setters to consider all potential impacts of new standards and require proper

impact assessments. We believe that new accounting standards should not impact well established and successful business models.

The IASB work program focuses on 4 key projects which should result in convergence.

In reaction to the IASB consultation on the future work program the European Commission's opinion was to finalise the current 4 projects before launching any new initiatives, in order to provide some stability to the system.

On the 4 key projects:

1. The European Commission closely follows the IASB work on revising the accounting requirements for financial instruments. The European Commission has decided not to endorse Phase 1 of IFRS 9 on the classification and measurement of financial assets via fast track procedure, because we believe together with key Member States that there are still issues that need to be improved. This view has not changed although some financial institutions claim that the project should be finalised rather sooner than later. We need to see the finalisation of all 3 phases (classification and measurement, impairment and hedging) before we can take a final endorsement decision. According to the IASB workplan this might be the case by the end of 2012.

2. The European Commission is concerned about the potential impacts of the proposed changes to IAS 11 and IAS 18 in the area of Revenue Recognition. The business model of some industries, e.g. in the telecom and construction industry, might be impacted in a way that does not reflect the real activity performed by the companies. We welcome the fact that in June 2011 the IASB has re-exposed the proposal for public consultation. This is a possibility for stakeholders to provide feedback before the standard is finalised.

3. The IASB is working on the revision of IAS 18 Leases. Previous proposal have not been supported in Europe. The general view is that a distinction between different kinds of lease arrangements similar to the current distincion made by the standard (operating vs. finance lease) should be kept. The IASB should make an effort to better explain the overall objective of the project.

4. On the revision of IFRS 4 Insurance Contracts the Commission is awaiting a revised proposal by the IASB.

In general the adoption of IFRS standards in the EU is on track. Most recently EU Member States voted in favour of amendments to IAS 1 Presentation of Financial Statements and IAS 19 Employee Benefits. Other standards are under discussion, e.g. IFRS 10, 11, 12 and amendments to IAS 27 and 28 Consolidation as well as IFRS 13 Fair Value Measurement. Proposals are currently under evaluation by the European Financial Reporting Advisory Group (EFRAG) in view of the endorsement criteria.

The European Commission intends to continue and intensify policy and technical dialogue with Japan in order to make sure that there is an on-going debate and exchange of views, e.g. regarding the issue of further convergence of accounting standards and necessary improvements regarding the governance of international standard setting bodies.

Tax

WP-D / #04 / EJ to EJ **Tax Issues in the EU and Japan**

The governments of Japan and Europe should ensure that dividend payments from subsidiaries to parent companies and royalty and interest payments between related parties are, to the greatest possible extent, exempted from withholding taxes in the source country. While there have been some improvements with respect to the dividend taxation between Japan and some EU member countries, we believe that the removal of double taxation is still an important issue, and we hope that all the EU Member States and Japan will conclude tax treaties. In order to reduce the risk of economic double taxation, furthermore, it is important to ensure an arena for wide-ranging dialogues between the tax authorities. In particular, as seen in the recently revised Japan Holland Tax Treaty, they should introduce clauses that will enable corresponding adjustments and arbitration in tax treaties. In addition, they should harmonise and simplify documentary requirements in transfer pricing taxation and promote and facilitate the conclusion of bilateral and multilateral APAs.

With the progress of convergence of Accounting Standards, new deviations arise between corporate accounting and tax practice. We ask that the Governments of Japan and Europe respond flexibly to the deviations.

When companies conduct their businesses on a global basis, transparent and fair taxation in countries are extremely important. If the taxation on some specific industry or sector is introduced, it could distort resource allocation and damage the sound growth of companies and economies. We hope that transparent and fair tax reform and implementation are continued.

Participation exemption, by which dividends and capital gains received from business investment are exempted from further corporate taxation, is one measure to encourage mutual direct investment. The authorities of the EU and Japan should consider introducing participation exemption and exempt dividends and capital gains received from business investment from further corporate taxation.

EU secondary law (Directives 2011/96/CE and 2003/49/CE) ensures the effective elimination of withholding taxes paid by associated enterprises within the EU. In addition, with the proposal for a Council Directive on a common system of taxation, applicable to interest and royalty payments made between associated companies of different Member States ((COM(2011) 714 final), the Commission has tabled further measures to tackle the issue of withholding taxes on interest and royalty payments in the Union. In particular, the proposed reduction of the participation threshold from 25% to 10% as the holding requirement should be mentioned here.

The Arbitration Convention (AC) includes a mandatory arbitration mechanism for transfer pricing disputes within the EU and the clarifications on some aspects of the AC included in the Revised Code of Conduct for the effective implementation of the Arbitration Convention in 2009 (Com. 2009/472) ensure the effective elimination of double taxation within the EU.

State of play, prospects of implementation, perception by services and need for modification

The elimination of juridical or economic double taxation introduced by EU law is limited to companies established in the EU. However, in some recent tax treaties concluded with Japan (Portugal, 19/11/11, The Netherlands, 25/10/10), Japan and the EU Member States have reduced withholding taxes (and the rate of participation on the capital of the associated company) on payments between associated enterprises compared to the OECD Tax Model. Unfortunately the majority of tax treaties between the EU Member States and Japan were concluded in the sixties. New tax conventions with reduced withholding tax rates for capital payments and including the new arbitration clause suggested by the CFA of the OECD should facilitate economic exchanges between EU and Japan.

- The functioning of the AC is regularly monitored and lead to an update of the provisions of the Code of Conduct on the AC.

- The mere existence of an arbitration mechanism for transfer pricing already contributed to the elimination of double taxation at the stage of MAP.

- Several Member States have already included arbitration clauses in their DTC amongst Member States, but also with third countries (e.g. Belgium and Germany). It can be assumed that the experience with the existence and the actual use of an arbitration mechanism contributes to an increased willingness from MS to agree on arbitration mechanisms in their bilateral treaties with non EU countries. However the choice to include this kind of clause is fully under the responsibility of EU MS.

- The EC has started working on a possible extension of the AC clause and process to other direct taxation issues.

Recommendation: on Harmonising and simplifying documentation requirements.

The Code of Conduct on transfer pricing documentation (EU TPD) published on 10 November 2005 (COM(2005) provides a harmonized and simplified documentation tool. It contains the "master file" that provides information such as a general description of the business and business strategy, of the transactions involving associated enterprises in the EU and of the enterprise's transfer pricing policy. The "master file" should be supplemented by country-specific documentation for each of the Member States concerned.

State of play, prospects of implementation, perception by services and need for modification

- The result of the monitoring exercise performed in 2009 (JTPF/017/BACK/2009/EN) shows that the EU TPD is broadly used in practice although not many MNEs opted for it officially.

- The EU TPD is more and more well received by the "public" and will also form the basis for further work at the level of other international bodies such as the OECD.

- At EU level, a monitoring exercise addressing the implementation and application of the EUTPD by MS and MNEs and potential ways for further improvement is on the JTPFs work programme for 2011 -2015.

Recommendation: on promoting the conclusion of APAs

The Guidelines for APAs within the EU adopted on 2 February 2007 (COM(2007)71), provide guidance about the legal framework behind APAs, about setting up an APA program and practical recommendations on how to conduct an APA. The implementation of an APA procedure as well as the number of APAs in the MS is monitored on a yearly basis.

State of play, prospects of implementation, perception by services and need for modification

- The monitoring exercise conducted after the adoption of the EU APA Guidelines showed that APAs programmes were increasingly implemented in EU MS which lead to an increase in the yearly number of APAs granted.

- This trend together with the guidance on how to perform an APA can be considered as promoting the conclusion of APA not only between EU MS but also between EU MS and non EU countries.

- A review of the APA policy and programs in the MS has been included in the JTPFs program of work 2011 – 2015.

Transparent Taxation- Participation Exemption

EU secondary law (Directive 2011/96/CE) ensures the effective elimination of withholding taxes in the source State – the State of the subsidiary - on distributed profits paid by subsidiaries to their parent companies where there is a minimum holding of 10%. At the same time, the Member State of the parent company shall also ensure the elimination of economic double taxation either by exempting from corporate tax the profits distributed or by allowing this company to deduct the taxes paid on such profits by any lower-tier subsidiary up to the corresponding tax due from the profits received.

- The Commission has adopted the CCCTB proposal where it is proposed the exemption of dividends and capital gains on shares regardless of the holding. In the case where the taxpayers opt for the consolidation and there is a minimum holding of 75%, intra-group income derived from participations is eliminated and is not included in the tax base for the purposes of taxation.

State of play, prospects of implementation, perception by services and need for modification

- The elimination of juridical or economic double taxation introduced by EU law is limited to companies established in the EU. However, in some recent tax treaties concluded with Japan (Portugal, 19/11/11, The Netherlands, 25/10/10), Japan and the EU Member States have reduced withholding taxes (and the rate of participation on the capital of the associated company) on payments between associated enterprises compared to the OECD Tax Model. Unfortunately the majority of tax treaties between the EU Member States and Japan are concluded in the sixties. New tax conventions with reduced withholding tax rates for capital payments and including the new arbitration clause suggested by CFA of the OECD should facilitate economic exchanges between EU and Japan.

- See references WP-A: 17(4.1) and WP-D: 9 on the state of play of the process for the adoption of the Commission's proposal for a CCCTB.

Recommendations only to the EU

Financial Services

WP-D / #08 / EJ to E **Solvency margin regulation**

Under the prudential regulation for insurers in the EU, the Solvency II to be introduced in January 2013, EIOPA (European Insurance and Occupational Pensions Authority) is now engaging in equivalence assessments between third-country regulatory and supervisory regimes and the Solvency II Directive • As Japan is included in the first wave under one part of this process (Reinsurance – Article 172), we have been working together with Japan's FSA, and have provided evidence and comments as requested by EIOPA.
We are confident that the regulatory environment for insurers and insurance groups in Japan is on a par with that in the EU. We shall therefore point out that it is of utmost importance for Japan to receive a positive equivalence determination from EIOPA and then not be disadvantaged by duplicative regulations, such as the pledging of assets to cover unearned premiums and outstanding claims between the home country and the host country. Also, we add that the whole assessment procedure which is expected to take until 2015 should be conducted in a constructive manner.

Action taken and state of play

In August 2010, Japan was one of three third countries, together with Bermuda and Switzerland, included in the first wave of equivalence assessments of third country supervisory regimes (in relation to re-insurance only). The European Insurance and Occupational Pensions Authority (EIOPA) had to assess whether Japan's solvency regime for undertakings carrying out reinsurance activities will be found equivalent to that set out in the Solvency II Directive. The assessment was only in relation to reinsurance because of the importance of Japan's reinsurance market.

EIOPA examined the legislation in place, supervisory practices, implementation and application of that legislation in close cooperation with Japan FSA. The technical advice provided by EIOPA in October 2011 concluded that Japan is equivalent but with some caveats. EIOPA's 2011 equivalence assessment is based on draft criteria. The European Commission has asked EIOPA to revisit its advice once the implementing measures for Solvency II are finalised. At the same time, EIOPA will also consider whether any changes made to the Japanese solvency regime affect the conclusions in their 2011 report. It is the European Commission that will take a final decision on equivalence, once this review is complete. Based on the current timetable, the European Commission plans to take its decision on the equivalence of the Japanese solvency regime for reinsurance activities during the first half of 2013.

The European Commission and the Japan FSA will continue their dialogue on insurance. The Commission services, together with EIOPA, are currently discussing with Japan's FSA the possibility of a Solvency II seminar in Tokyo in 2012.

Tax

WP-D / #09 / EJ to E **Tax Issues in the EU**

It is extremely important to maintain a transparent and fair tax system in each country when the enterprises develop their business globally. Introduction of tax regulation focusing on specific industry or category of business, such as a Bank Tax, would pose a distortion of resource distribution and damage the sound development of enterprises and the economy. We ask the EU and the Member States not to introduce the tax regulation which foreseeability would lead to distortion of economic activities in the private sector.

Many Japanese companies in the EU are implementing integration and rationalization of their European business organizations. Examples are the centralization of such functions as sales support and accounting. The relation between intra-group transactions and taxation is an important element in decision making in a business. We ask the EU and the Member States to establish a tax system that will enable companies conducting business in the EU to enjoy the benefit of the Single Market to its full extent. In particular, we request to achieve the following:

We welcome the proposal for a Council Directive on a CCCTB (Common Consolidated Corporate Tax Base) proposed on 16 March. In a common consolidated corporate tax base, non-taxation of unrealised gains on goodwill within a group of companies that form a CCCTB, non-application of the arms-length principle within a group of companies that form a CCCTB and the off-setting of profits and losses within a group of companies that form a CCCTB should be realised.

As for amendment of the Merger Directive (Directive 90/434/EEC), we request to extend the scope to cover the transfer of real estate and other intangible assets in reorganisation and to abolish the requirements in certain Member States to maintain the holding of shares received in exchange of contributed assets for a specified of years.

Transfer Pricing; To provide sufficient incentive for compliance with the EU TPD, the EU and the Member States should commit themselves to exemption from penalties (i.e. penalties related to non-compliance with documentation requirements, penalties related to transfer pricing adjustments and interest related to adjustments) if a company submits an EU TPD acting in good faith and in a timely manner.

VAT: Although the VAT system is a common system in the EU, Member States have certain discretion in it. Presently, therefore, the centralisation of VAT administration carries a high financial risk. The EU should go further in the simplification and harmonisation of the VAT system so that companies with Europe-wide businesses could centralise VAT accounting in a cost-effective manner.

Company Taxation

EU secondary law (Directive 2009/133/EC) ensure the deferral of taxation on income and capital gains derived from business restructurings such as mergers, divisions,

partial divisions, transfer of assets, exchange of shares and the transfer of the registered office of European Companies and European Cooperative Societies. This deferral is also applicable to the companies' shareholders that exchange shares of the companies transferring assets for shares of the receiving or acquiring companies.

The CCCTB Commission proposal provides for the elimination of income from intra-group transactions so that it is not included in the tax base of the group. This covers internal restructurings: income, capital gains and transfer pricing linked to such reorganizations will not be subject to tax immediately but will be deferred until a later disposal of the assets in transactions with persons or entities not belonging to the consolidated group.

State of play, prospects of implementation, perception by services and need for modification

- The elimination of juridical or economic double taxation introduced by EU law is limited to companies established in the EU which covers EU based companies whose capital is owned by Japanese investors.

- See below references WP-A: 17(4.1) and WP-D: 9 on the state of play of the process for the adoption of the Commission's proposal for a CCCTB.

Common Consolidated Corporate Tax Base

See **WP-A: 17 (4.1)**

Transfer Pricing

See **WP-A: 17(4.3)**

VAT

Please see the Communication on the Future of VAT, presented by the Commission on 6 December 2011 [COM(2011)851]. This Communication has a dual purpose. Firstly it sets out the fundamental characteristics that must underlie a new VAT regime (long term objective) and secondly it defines the priority actions for the coming years, needed to create a simpler, more efficient and more robust VAT system in the EU, tailored to the single market.

A simpler EU VAT system, in which taxable persons active across the EU should be faced with a single set of clear and simple VAT rules, is one of the long term objectives that the Commission will pursue in this reform. The Communication highlights a number of concrete actions that will be taken in the following years, with the aim of moving in the direction of that long-term objective (see point 5.1 of the Communication).

This broad review will be launched this year and should be followed by a legislative proposal by the end of 2013 (see point 5.2.2 of the Communication).

"Environment and Sustainable Development"

Working Party E

Recommendations from Both European and Japanese Industries

Natural Disasters and Safety Measures

WP-E / # 01 / EJ to EJ **Identification and prevention measures for natural risks**

The EU and Japan should put in place appropriate mechanisms to identify the potential risks of natural disasters and the probability of their occurrence, and objectively verify their impact. Cost-effective measures should be taken to prevent and reduce the consequences of these risks.

After the Fukushima accident, the European Union decided to reassess the level of nuclear safety and its governance. The EU-wide comprehensive risk and safety assessments of nuclear power plants have been under way since June 2011. Nuclear installations have been assessed at national level following a common methodology.

These assessments go beyond safety evaluations during the licensing process and periodic reviews. The aim is to assess whether safety margins are sufficient to cover various unexpected events. They are conducted on a voluntary basis in three-steps: 1) licensees (nuclear operators), 2) independent national authorities (regulators), and 3) peer reviews.

All 14 Member States operating nuclear power plants and Lithuania, where a nuclear power plant is being decommissioned, provided national reports to the European Commission by end of 2011. These reports are now subject to peer reviews to be completed by end April. The consolidated report is to be presented to the European Council at the beginning of June 2012.

The European Council has called on the Commission to review the EU nuclear safety framework and to propose any necessary improvements. Relevant legislative proposals will be tabled at the end of 2012, taking into account the results of the risk and safety assessments.

Numerous exchanges with Japanese authorities have taken place in the past year on the European stress tests and experts from the Japanese Nuclear and Industrial Safety Agency were invited to participate in this process (including as observers in the EU peer reviews), in order to reflect the lessons learnt of the Fukushima incident.

WP-E / # 02 / EJ to EJ **Facilitating international support in case of disaster**

International support is indispensable in times of a major natural disaster. The necessary measures need to be adopted to facilitate the swift acceptance of support from overseas.

To be provided later

WP-E / # 03 / EJ to EJ **Independent assessment of Fukushima accident**

With regard to the Fukushima Daiichi nuclear power plant accident, we call strongly for the independent, objective, and immediate verification of the situation. In addition, we believe

that the EU and Japan should promote discussions on improving the safety of nuclear energy in international fora.

The lessons learned from Fukushima must be carefully studied by governments and the nuclear industry. The EU and Japan committed to close cooperation with international expert bodies involved in assessing the consequences of the Fukushima Daiichi accident such as the International Atomic Energy Agency (IAEA), the Nuclear Energy Agency of the Organisation for Economic Cooperation and Development (OECD/NEA), the World Health Organization (WHO), and the UN Scientific Committee on the Effects of Atomic Radiation (UNSCEAR).

Alternative and Renewable Energies

WP-E / # 04 / EJ to EJ **Enhancing high-level EU-Japan dialogue on energy**

The EU and Japan should enhance their dialogue on energy policy, including the setup of a dedicated high-level dialogue on nuclear energy.

Energy cooperation has for a long time been on the agenda of bilateral cooperation between the EU and Japan. Following the commitment of the 2006 EU-Japan Summit to promote cooperation on energy efficiency and conservation worldwide, renewable sources and development of new energy technologies, the two sides have established a Regular Energy Dialogue at the level of Directors General. Several meetings have taken place since then, addressing various aspects of energy policy. At the bilateral EU-Japan Summit in 2011, the Leaders of the EU and Japan have pledged to continue and reinvigorate bilateral energy cooperation. The next dialogue meeting is foreseen to take place in the first half of 2012 and will consider ways to enhance energy cooperation.

WP-E / # 05 / EJ to EJ **Leadership role to establish world safety standards**

The EU and Japan should take a proactive, leading role in supporting the establishment of world safety standards for nuclear power plants through the Ministerial Conference, the IAEA,… and more generally promote international cooperation on nuclear energy.

Ensuring and continuously improving nuclear safety is an absolute priority for EU. The adoption of the Directive on the safety of nuclear installations in 2009 was a groundbreaking step in this field. The EU is the first major regional nuclear actor to provide a binding legal framework on nuclear safety.

The EU considers that the international nuclear safety framework, particularly the Convention on Nuclear Safety, should be reviewed in order to increase its effectiveness, governance and enforceability.

EU and Japan leaders resolved at the last bilateral Summit to work bilaterally and with their international partners to promote the highest levels of nuclear safety around the world, in particular through the International Atomic Energy Agency (IAEA) and the G8/G20.

WP-E / # 06 / EJ to EJ **Nurturing skilled independent nuclear safety authority**

Japan and EU member countries should maintain a highly skilled nuclear safety authority in each country and ensure its independence.

One of the key lessons learnt from the Fukushima accident is that the effective independence of the national regulatory authorities must be ensured. The Nuclear Safety Directive adopted in 2009 foresees that EU Member States establish and maintain a competent regulatory authority in the field of nuclear safety of nuclear installations. The competent regulatory authority has to be functionally separate from any other body or organisation concerned with the promotion, or utilisation of nuclear energy, including electricity production, in order to ensure effective independence from undue influence in its regulatory decision making.

In the context of the review of the nuclear safety framework, consideration will be given to whether there is a need to strengthen relevant provisions of the Nuclear Safety Directive, by making them more explicit and defining criteria for the effective independence of the national regulatory authorities or clarifying minimum regulatory competencies that national authorities must possess.

WP-E / # 07 / EJ to EJ **Cooperation on renewable energy development**

Japan and the EU should cooperate on the development of renewable energies, such as wind and photovoltaic power generation, and on other low-carbon

Current discussions on enhancing EU-Japan bilateral cooperation on energy are looking also at possibilities to enhance cooperation on renewable energy. Numerous meetings at technical level have taken place in the last year between the representatives of the EU and Japan authorities on the EU experience in renewable energy policy, EU targets in this field and support measures in the EU Member States.

On the research side, Japan is a priority strategic partner for the EU for cooperation on new and renewable energy research. Among specific activities in this field, a coordinated research call on ultra-high efficiency concentration photovoltaic (CPV) cells, modules and systems photovoltaic (PV) was included in the Seventh Framework Programme in 2011 and projects under this call are currently under implementation.

WP-E / # 08 / EJ to EJ **Promoting reciprocal access to R&D facilities**

The EU and Japan should support joint R&D activities or mutual access to unique, capital intensive R&D facilities located in either the EU or Japan.

The EC is supporting scientific cooperation within Europe and with third countries such as Japan through the 7th Research Framework Programme ("FP7", 2007-2013). European and Japanese researchers wanting to conduct joint R&D activities can apply for funding through a multitude of different calls. As regards unique, capital

intensive R&D facilities, these are being addressed by the FP7 programme on research infrastructures.
http://ec.europa.eu/research/fp7/index_en.cfm?pg=infra
http://cordis.europa.eu/fp7/capacities/research-infrastructures_en.html
Currently under FP7, the European Commission is supporting projects on joint R&D in the field of accelerator technology, involving both European and Japanese researchers. This collaboration could certainly serve as a model for more extensive cooperation in other field of science and technology, too.

WP-E / # 09 / EJ to EJ **Sharing best practices for safety and regulation with emerging nuclear power countries**

The EU and Japan should position nuclear power as an alternative energy and provide assistance to each other and to other countries, giving priority to sharing best practices in the fields of regulation and safety. The EU and Japan need to effectively support emerging nuclear power countries through a combination of bilateral, regional, and cooperative activities through international organisations.

To strengthen safety culture and emergency preparedness worldwide, international cooperation on nuclear safety is more important than ever, particularly in the framework of the IAEA. In June 2011, the European Commission held a meeting with representatives of EU neighbouring countries which operate or own nuclear installations or which have plans for the development of nuclear power – Armenia, Republic of Belarus, Republic of Croatia, Russian Federation, Swiss Confederation, Republic of Turkey and Ukraine. An agreement was reached with these countries to undertake voluntary safety assessments taking into account the EU specifications and methodology, including the principle of peer reviews. Two of these countries – Switzerland and Ukraine – participate fully in the EU stress-test process.

WP-E / # 10 / EJ to EJ **Promoting involvement of international institutions to finance capacity-building actions for nuclear safety**

To achieve a high level of safety, Japan and the EU should encourage the World Bank, the European Bank for Reconstruction and Development (EBRD), and the European Investment Bank (EIB) to allocate funds for, and to promote the establishment of, dedicated nuclear safety programmes.

The EU Instrument for Nuclear Safety Cooperation provides financial support for measures for improving nuclear safety in non-EU countries, particularly in terms of regulatory framework or management of nuclear plant safety (design, operation, maintenance, decommissioning), the safe transport, treatment and disposal of radioactive waste, remediation of former nuclear sites, protection against ionising radiation given off by radioactive materials, accident prevention and reaction in the event of an accident, or also the promotion of international cooperation. The financing takes the form of projects or programmes, grants to fund measures, contributions to guarantee funds and national or international funds, or even human or material resources.

WP-E / # 11 / EJ to EJ **Ensuring fair competition in exports**

The EU and Japan need to create equally competitive fields for export industries, including fulfilment of world safety standards, and strictly adhere to the OECD's Arrangement to Officially Support ***Export Credits.*** *The EU and Japan should request other countries to make every effort to also adhere to these provisions.*

The European Commission attaches the greatest importance to the adherence of international disciplines governing export credits, i.e. the Arrangement. The EU has raised specifically the issue of level playing field with other countries that are not Participants to the Arrangement, and most importantly with China which has emerged as one of the most important providers of export credit in the world. The EU – China summit of February 2012 specifically addresses this issue with continued discussions with China on respective policies concerning export credits.

We have also taken note of the US-China initiative of last February to establish an international working group to work on a set of international guidelines on the provision of official export financing. While the EU welcomes this development as a major step forward for including all major players in the same disciplines, further considerations need to be made regarding the substance and process of this initiative. The EU and Japan could coordinate support for this initiative.

WP-E / # 12 / EJ to EJ **Fostering international harmonization for EV safety and charging infrastructure**

WP-E / # 13 / EJ to EJ **Cooperating on pre-commercial development of batteries**

WP-E / # 14 / EJ to EJ **Sharing best practices for reuse and recycling of batteries**

The EU and Japan should work together in UN-ECE WP 29 and other fora to develop internationally harmonized requirements for the safety and type approval of electrically charged vehicles and common standards for accessing the battery charging infrastructure.
The EU and Japan should seek opportunities for partnerships between governments and research institutes to develop pre-competitive technologies for next-generation batteries (e.g., for lowering cost, improving battery life, enhancing safety, and raising energy density).
The EU and Japan should share best practices with respect to the reuse and recycling of rechargeable batteries to enhance their secondary use.

Regarding electric vehicles and batteries the European Commission is happy to inform that the regulatory authorities of Japan and the EU, together with those of the US, have launched specific work on these issues under the UNECE framework, based on the decision to closely cooperate on convergence of regulatory obligations related to electric vehicles in the global context. This will lead to cost savings through economies of scale for automotive manufacturers. Under the proposed cooperating agreement two informal working groups on electric vehicles will be set up under the 1998 Agreement on Global Technical Regulations. The initiative was taken by the European Commission, the National Highway Traffic Safety Administration (NHTSA) and the Environmental Protection Agency (EPA) in the United States and the Ministry of Land, Infrastructure, Transport and Tourism of Japan**2**. The working

groups are indeed **open to all countries** that are contracting parties to the relevant UN Agreement, including India and China.

The first group will address the safety aspects of electric vehicles and their components, including the battery. It will cover the safety of occupants against electric shocks in-use, while recharging as well as after an accident. The second group will focus on environmental aspects of regulations applied to electric vehicles.

WP-E / # 15 / EJ to EJ **Promoting demo projects of smart cities and smart grids**

The EU and Japan should promote demonstration experiments of smart cities and smart grids with respect to rechargeable batteries and related products and should provide open access to allow each other's industry to participate in such experiments.

The EU Smart Cities & Communities initiative under the European Strategic Energy Technology Plan (SET-Plan) aims to demonstrate low carbon urban technologies that integrate the areas of energy efficiency, generation of renewable energy and smart distribution grids, transport, and ICT. The main components of the initiative, the modalities of which will be elaborated in the coming months, will include project funding, clustering of cities, stakeholder platform and links with the Covenant of Mayors for broader dissemination of best practices.

The 2012 Smart Cities call under the Seventh Framework Programme (€75 million) addressed the topics of smart cities planning, district heating and cooling, and energy refurbishment of buildings. It received 46 proposals, which were evaluated in January. Participation in such research calls is open to international organizations and legal entities established in third countries, including Japan.

The Stakeholder Platform for Smart Cities and Communities was launched at the end of 2011. This Platform will constitute a forum for business, public authorities and the research community to engage in international and cross-sector cooperation. The first Smart City Stakeholder Platform Conference will take place on 4-5 June 2012, in Brussels.

Securing Supplies of Rare-Metal Resources and Other Raw Materials

WP-E / # 16 / EJ to EJ **Promoting level playing field for access to raw materials**

The EU and Japan should promote a level playing field for access to raw materials. In this respect, they should identify common actions to take in international fora such as the OECD and WTO in order to promote a coherent set of rules on access to raw materials in their bilateral relations as well as in multilateral negotiations, including WTO membership negotiations

The EU is supporting the work at the level of the OECD and WTO as well as addressing the issues in various bilateral relations, in particular with our strategic partners such as for example the US and Japan.

WP-E / # 17 / EJ to EJ **Requesting practical commitment on governance**

The EU and Japan should engage in partnerships with countries endowed with natural resources. In their development policies, they should promote the improvements of the governance of resource-producing countries by requesting specific commitments to effective natural-resource management in governance action plans and the strict enforcement of budget-support criteria. In addition, investments in infrastructure and actions to enhance a favourable business environment should be promoted.

The EU will encourage development partner governments to develop comprehensive reform programmes that clearly identify objectives such as improving mining taxation regimes or enhancing revenue and contract transparency, or enhancing the capacity for using revenues to support development objectives. Greater transparency will help society at large and national supervisory bodies to hold governments and companies to account for revenue payments and receipts, and thus decrease fraud and corruption and ensure a more predictable trade and investment climate.

The African Union Commission and the European Commission have agreed to establish a co-operation on raw materials within the context of the Africa-EU Joint Strategy 2011-2013. This cooperation covers three areas: governance, investment, and geological knowledge/skills.

The implementation of the activities foreseen under this Action Plan included so far:

- at technical level a Workshop on Mining Taxation in Addis Ababa on 9-10 December 2011 a back to back event with the Mining Ministerial of the AU

- at political level a High-Level Conference EU-Africa Partnership on Raw Materials on 26 January 2012.

WP-E / # 18 / EJ to EJ **Promoting adhesion and enforcement of EITI**

The EU and Japan should work closely with other governments, industrial bodies, and NGOs to enable resource-producing countries to fulfil the EITI's "Principles and Criteria" and to advance from candidate to compliant EITI countries.

Recent European Commission Communication on security of energy supply and international cooperation has called for increasing focus on the promotion of good governance in all EU's energy dialogues.

The EU is an official supporter of the EITI Initiative of the World Bank and its principles. In addition to the financial contributions of some EU Member States, the EU contributes financially to the EITI Multi-Donor Trust Fund (EITI MDTF). The European Commission also participates in the work of the EITI Board and in the Management Committee (MC) of the EITI Implementation Support Facility Trust Funds (EITI MDTF).

In October 2011, the Commission put forward a legislative proposal requiring the disclosure of payments to governments on a country and project basis by listed and

large unlisted companies with activities in the extractive (oil, gas and mining) and forestry sectors. The proposed system of country-by-country reporting (CBCR) would apply to EU privately-owned large companies or companies listed in the EU that are active in the oil, gas, mining or logging sectors. Reporting taxes, royalties and bonuses that a multinational pays to a host government will show a company's financial impact in host countries. This more transparent approach would encourage more sustainable businesses.

WP-E / # 19 / EJ to EJ **Following OECD guidelines when operating in or procuring minerals from conflict-affected area**

The EU and Japan should prevent resource development from funding conflicts. When developing open and responsible supply chains, governments and industries should cooperate with each other to adopt acceptable and viable approaches and processes. The OECD's guidance for responsible supply-chain management of minerals from conflict-affected and high-risk areas provides a good basis.

In the Communication on Raw Materials adopted in February 2011, the Commission recognised that many of the raw materials which the EU imports are produced in a few countries, some of which are subject to low political and economic stability. For one of these increased-risk countries – the Democratic Republic of the Congo – the OECD considers that trade in certain minerals, namely in tantalum, tungsten, tin and gold, has a potential to exacerbate regional conflict in specific eastern Congolese regions.

In the above Communication the Commission proposed to "examine ways to improve transparency throughout the supply chain and tackle in coordination with key trade partners situations where revenues from extractive industries are used to fund wars or internal conflicts". In this context, the Commission is mindful of the implementation of 1502 of the US Frank-Dodd Act and how it may impact on the DRC's minerals trade. The Commission also expressed it support to the work of the OECD on due diligence in the mining sector in conflict zones.

WP-E/ # 20 / EJ to EJ **Promoting action to minimize commodity price volatility**

Japan and the EU should strive to reduce excessive price volatility in commodity markets and should accordingly identify common actions to take in international fora.

The European Commission has actively supported G20 work on commodity market transparency and oversight. The G20 Experts' group on fossil-fuel price volatility has addressed issues of improving the transparency of physical markets, in particular through the JODI-Oil database, assessing the functioning of oil Price Reporting Agencies, strengthening the producer-consumer dialogue on oil markets, and extending the work on physical oil market transparency to physical markets for gas and coal.

In October 2011, the European Commission has put forward legislative proposals for further targeted measures to improve the functioning of derivatives markets, with a particular emphasis on commodity derivatives. The measures will increase

transparency of trading activity in commodity and other derivatives and ensure that relevant data on the activities of all key market participants will be more readily available. It will also prevent the abusive behaviour of markets participants by covering all kinds of venues and transactions by pan-EU rules. For example, enhanced information flows will contribute to greater market efficiency and integrity and a better understanding of new forces affecting price formation, while new dedicated supervisory tools will allow regulators to react more effectively to disruptive or abusive trading practices. Position limits are an important part of the toolkit which we propose.

With the adoption of proposals reviewing the Directives on Market Abuse (MAD) and on Markets in Financial Instruments (MiFID) on 20 October 2011, the Commission has since completed the formal roll-out of the proposals listed therein for a series of targeted measures in various pieces of EU financial services legislation in order to achieve the stated objectives. The proposals are largely backed by the recently proposed "Principles for the Regulation and Supervision of Commodity Derivatives Markets" by the International Organisation of Securities Commission (IOSCO).

WP-E/ # 21 / EJ to EJ: Supporting R&D for recycling and material substitution

Japan and the EU should encourage the recycling of raw materials in developed countries through R&D, industrial policy, and international cooperation as well as promote research aimed at the substitution of critical raw materials.

Under the Transatlantic Economic Council (TEC), the EU and US have recently launched a bilateral cooperation in the area of raw materials, which includes the area of recycling. A detailed work programme was adopted on 29 November 2011.

In addition, a first EU-Japan-US trilateral meeting on strategic and economic implications of global shortages in critical raw materials took place in Washington DC on the 4th and 5th of October 2011. As a common playing field for R&D and Innovation recycling and substitution of critical raw materials, in particular REE has been identified. A second EU-Japan-US Workshop on Critical Materials is foreseen to take place in Tokyo, Japan, on 28-29 March 2012. In a couple of parallel sessions one will focus on public R&D Programmes and Possibilities on Collaborations, New approaches to Reduce Rare Earths for Permanent Magnets and Phosphors and Environmentally sound, economical separation processes for rare earths in diverse ore bodies and recycling streams.

Global-Warming Issues

WP-E/ # 22 / EJ to EJ Establishing new, fair, and effective international framework

The EU and Japan should promote a post-Kyoto framework that engages all major emitters of greenhouse gases to take a fair share of the burden of global CO2 emission stabilization and reduction.

The European Union, like Japan, welcomes the agreement reached at the UN climate conference in Durban as a historic breakthrough in the fight against climate change. In December 2011, the 195 Parties to the UN climate change convention agreed on a platform, proposed by the EU, for drawing up a legal framework by 2015 for climate action by all countries. The Durban conference also agreed that there will be a second commitment period of the Kyoto Protocol, made operational the new Green Climate Fund for developing countries and approved a series of measures which build on the progress made at last year's Cancun conference.

The Durban Package includes inter alia the Durban Platform for Enhanced Action to develop a new Protocol, another legal instrument or agreed outcome with legal force that will be applicable to all Parties to the UN climate convention. The decision states that this process shall raise levels of ambition in reducing greenhouse gas emissions. The new instrument is to be adopted by 2015 and be implemented from 2020. At the initiative of the EU and the Alliance of Small Island States (AOSIS), the conference also agreed to launch a work plan to identify options for closing the "ambition gap" between countries' current emissions reduction pledges for 2020 and the goal of keeping global warming below 2°C.

Since 2010the international community has recognized the scientific evidence that global warming needs to be held below 2°C (3.6°F) above the pre-industrial temperature in order to prevent climate change from reaching dangerous proportions. However, international action taken to date, including in Durban, is still not sufficient to prevent this ceiling from being exceeded. Scientific evidence indicates that a temperature rise of more than 2°C could have irreversible and potentially catastrophic environmental consequences with high costs in human and economic terms.

The EU is successfully reducing its emissions of greenhouse gases, but worldwide emissions are continuing to grow. Global energy-related emissions of carbon dioxide (CO2), the main greenhouse gas, reached a record (30.4 gigatonnes) in 2010. The concentration of CO2 in the atmosphere is increasing annually and is at its highest level for 650,000 years, scientific research shows.

The EU is leading by example through its domestic action to tackle climate change. Despite healthy economic growth of almost 40% since 1990, the EU-15 is well on track to achieve and exceed its 8% emissions cut under Kyoto. Ten of the 12 countries which subsequently joined the EU in 2004 and 2007 also have Kyoto commitments which require them individually to reduce their emissions by 6 or 8%. These Member States are also on track to meet their targets. Taking all 27 EU Member States together, GHG emissions in 2010 were 15.5% lower than in 1990 while GDP was 41% higher. Full details can be found in the European Commission's annual progress reports.

More than ever before would it now be necessary that climate action becomes a truly global endeavour where the burdens are fairly shared while taking into account present and prospective emission levels by countries.

The EU hopes that Japan will also maintain ambitious climate policies, including through confirming is 25% emission reduction pledge by 2020.

The EU and Japan hold regular bilateral dialogues to further exchange views on these issues.

WP-E/ # 23 / EJ to EJ **Setting CO_2 emission targets in a fair and transparent way**

The EU and Japan, when setting national targets, should take into account their international fairness, feasibility, and social impact on citizens. The setting of such targets should be done with a high level of transparency and in consultation with stakeholders.

In 2007, EU leaders - recognizing the benefits in terms of stimulating innovation, economic growth and jobs - committed the EU to becoming a highly energy-efficient, low-emission economy. Since then binding legislation has been put in place to cut emissions to 20% below 1990 levels by 2020. The EU is offering to increase this reduction to 30% if other major economies commit to take on their fair share of global action. In the longer term, the EU is committed to cutting its emissions by 80-95% below 1990 levels by 2050 as part of the effort required from the developed world as a whole. In March 2011 the European Commission published a roadmap that charts a cost-effective pathway for making the necessary transition to a competitive, low carbon European economy by mid-century.

This 'climate and energy package' was agreed by the European Parliament and Council in December 2008, after extensive, inclusive and transparent consultations with all stakeholders, and taking into account domestic circumstances. It then became law in June 2009. Future climate legislation will continue to be based e.g. on open consultation and full transparency, and answering the findings of science.

WP-E/ # 24 / EJ to EJ **Facilitating transfers of green technologies**

The EU and Japan should assist emerging economies in developing the necessary human resources and infrastructure so that they can smoothly absorb advanced technologies. To facilitate the transfer of technologies on a commercial basis, the EU and Japan should support the recipient countries in putting in place an appropriate regulatory framework and enforcement tools to ensure the protection of intellectual property rights.

Assistance to developing countries in capacity building in matters of climate change is being pursued by a number of bilateral contacts between the EU and developing countries. In addition to that, the technology mechanism agreed in Cancun in 2010 and conceptually completed in Durban should become the main future vehicle by which capacity building and technology transfer is being organised.

The EU provides technical assistance on IPR issues to several third countries for the development of legislation and for the implementation system. An example of it is the IPR2 project in China. Some other programmes are being offered to other receiving countries as well as Member States bilateral initiatives.

WP-E/ # 25 / EJ to EJ **Continuously improving incentives and regulations to promote adoption of energy-efficient technologies and processes**

The EU and Japan should continue to refine their regulations and incentives to promote the efficient use of energy (energy efficiency as well as energy savings).
Setting norms for building and house insulation plays a major role in achieving a significant reduction in CO2 emissions. Japan and the EU should also share best practices for eco-labelling.

With the 2020 Strategy for smart, sustainable and inclusive growth, the EU is promoting energy-efficient and - more largely - resource-efficient technologies, processes and products. Developing energy-efficient and environmentally performing products and services constitutes an important element of the EU industrial policy, which aims to support the shift towards a competitive and low-carbon economy.

The Ecodesign Directive is a component part of this policy and is meant to be used in combination with other EU legal instruments: the Energy Label, the Ecolabel and Green Public Procurement. The Ecodesign Directive sets a framework for improving the environmental performance of energy-related products through ecodesign. 12 measures already adopted under the Ecodesign Directive provides for total energy savings by 2020 equivalent to more than almost 14% of the EU electricity consumption in 2009. New measures are in preparation, for example on air conditioners, boilers or ventilation systems, as well as 4 voluntary self-regulations by industry. The voluntary agreement on complex set top boxes has been already endorsed.

The Commission services support enhanced cooperation between the EU and Japan in view of sharing best practices and refining their regulations and incentives to promote environmentally performing products and services.

WP-E/ # 26 / EJ to EJ **Cooperation on long-term innovative R&D projects to reduce GHG emissions**

The EU and Japan should cooperate on joint R&D efforts by industry, academia, and government to develop innovative technologies to reduce greenhouse gas emissions.
They should also allow access by their industries to their domestic pre-competitive, government-funded research projects because highly innovative technologies require lengthy timelines and very large budgets for basic research and development.

The Commission's Roadmap for a competitive low carbon economy in 2050 announced as a follow-up sector specific policy initiatives. This would include the support of industry in its development of sector specific roadmaps, such as for instance the one recently presented by the EU paper and pulp industry. In the context, the development of innovative and advanced technologies is clearly acknowledged as a key aspect, highlighting the need for international cooperation in the fields of innovation and research.

As of today, the Commission supports industrial GHG emission efficiency improvements in the energy intensive industry sectors through its SILC (Sustainable

Industry Low Carbon) initiative. Also, the European Technology Platforms as industry-led stakeholder fora do play an important role in the definition of research priorities in a number of technological areas where achieving growth, competitiveness and sustainability requires cooperative action. A prominent outcome of these activities is for instance the ULCOS project in the steel making sector which develops ultra-low carbon breakthrough technologies. Finally, the Commission actively supports the industrial scale-up and deployment of carbon capture and storage (CCS) technologies through the NER300 demonstration programme.