



HIGH REPRESENTATIVE
OF THE UNION FOR
FOREIGN AFFAIRS AND
SECURITY POLICY

Brussels, 27.4.2018
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Joint Proposal for a

COUNCIL DECISION

on the signing, on behalf of the European Union, and provisional application of the Strategic Partnership Agreement between the European Union and its Member States, of the one part, and Japan, of the other part

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

On 29 November 2012, the Council adopted a Decision authorising the European Commission and the High Representative of the Union for Foreign Affairs and Security Policy to negotiate a framework agreement between the European Union and its Member States, of the one part, and Japan, of the other part. The negotiations began in April 2013 and were concluded in April 2018.

Negotiations were carried out in consultation with the Working Party on Asia and the Pacific (COASI), which was appointed as the consultative committee. The European Parliament has been kept regularly informed throughout the negotiations.

The High Representative and the Commission consider that the objectives set by the Council in its negotiating directives have been met and that the draft Strategic Partnership Agreement can be submitted for signature and provisional application.

The present proposal concerns the legal instrument that authorises the signing and provisional application of the Agreement.

2. AIM AND CONTENT OF THE AGREEMENT

The EU and Japan have a history of extensive political, economic and sectoral cooperation, which has evolved over time. Building on shared fundamental values, the EU established a Strategic Partnership with Japan in 2001.

The Strategic Partnership Agreement is the first-ever bilateral framework agreement between the EU and Japan. The Agreement greatly strengthens the overall partnership by promoting political and sectoral cooperation and joint actions on issues of common interest, including on regional and global challenges. The Agreement will provide a legal foundation for improving bilateral cooperation and cooperation in international and regional organisations and fora. It will help promote shared values and principles, in particular democracy, the rule of law, human rights and fundamental freedoms.

The Agreement will serve as a platform for closer cooperation and dialogue across a broad range of bilateral, regional and multilateral issues. It strengthens political, economic and sectoral cooperation across a wide spectrum of policy fields, such as climate change, research and innovation, maritime affairs, education, culture, migration, counter-terrorism and the fight against organised crime and cybercrime. It restates the Parties' commitment to safeguard international peace and security by preventing the proliferation of weapons of mass destruction and taking measures to deal with the illicit trade in small arms and light weapons.

It establishes a Joint Committee with the objective of coordinating the overall partnership which is built upon this Agreement.

The Agreement provides for the possibility of suspending its application if there is a violation of essential elements of the Agreement, i.e. the human rights clause (Article 2(1) of the Agreement) and the non-proliferation clause (Article 5(1) of the Agreement). In addition, the Parties note that in such cases a Party may take other appropriate measures outside the framework of this Agreement in accordance with international law.

The Strategic Partnership Agreement and the Economic Partnership Agreement are part of one negotiating context and have a clear legal link. Together, they are expected to provide tangible benefits and opportunities to the people of the EU and Japan.

3. LEGAL BASIS OF THE PROPOSED DECISION

3.1. Substantive legal basis

The European Court of Justice has held¹ that a measure that simultaneously pursues a number of objectives, or that has several components that are inseparably linked without one being incidental to the other, and to which various provisions of the Treaty therefore apply, must be founded, exceptionally, on the various corresponding legal bases, unless the procedures laid down for each legal basis are incompatible with each other.

The Agreement pursues objectives and contains components in the areas of (i) common foreign and security policy (CFSP) cooperation and (ii) economic, financial and technical cooperation with third countries. These aspects of the Agreement are inseparably linked without one being incidental to the other.

The legal basis of the proposed decision should therefore include Article 37 of the Treaty on European Union (TEU) and Article 212 of the Treaty on the Functioning of the European Union (TFEU).

3.2. Procedural legal basis

Article 218(5) TFEU provides for the adoption of a decision to authorise the signing of an agreement and its provisional application before entry into force. The second subparagraph of Article 218(8) TFEU provides that the Council is to act unanimously if the agreement covers a field for which unanimity is required for the adoption of a Union act. The CFSP is a field in which unanimity is required for the adoption of a Union act.

3.3. Conclusion

The legal basis of the proposed decision should therefore be Articles 37 TEU and 212 TFEU, in conjunction with Articles 218(5) TFEU and the second subparagraph of Article 218(8) TFEU. No additional provisions are required as a legal basis².

4. OTHER LEGAL ELEMENTS OF THE PROPOSAL

The Union and Japan agreed that ensuring implementation of the Agreement as soon as possible after its signature would be mutually beneficial. However, given legal constraints on the Japanese side, it was not possible to use the EU standard language on provisional application.

The Parties have instead agreed that certain parts of the Agreement are to be applied ‘pending its entry into force’ and that they shall have ‘the same legal effect as if the Agreement were in force between the Parties’ (see Article 47(2) and (3) of the Agreement). A declaration to be

¹ Case C-490/10 Parliament v Council, ECLI: EU: C: 2012: 525, paragraph 46.

² Case C-377/12 Commission v Council, ECLI: EU: C: 2014: 1903.

made by the European Union upon the signing of the Agreement will clarify that the legal effect of the parts to be applied pending entry into force is to be interpreted in a manner that is consistent with Article 25 ‘Provisional application’ of the Vienna Convention on the Law of Treaties.

5. NECESSITY OF PROPOSED DECISION

Article 216 TFEU provides that the Union may conclude an agreement with one or more third countries where the Treaties so provide or where this is (i) necessary to achieve, as part of the Union’s policies, one of the objectives referred to in the Treaties, (ii) is provided for in a legally binding Union act, or (iii) is likely to affect common rules or alter their scope.

The Treaties provide for the conclusion of agreements such as the Strategic Partnership Agreement, namely in Articles 37 TEU and 212 TFEU. Moreover, the conclusion of the Strategic Partnership Agreement is necessary for achieving — in the framework of CFSP and economic, financial and technical cooperation with third countries — objectives referred to in the Treaties. These include objectives in the areas of: human rights, non-proliferation of weapons of mass destruction, counter-terrorism, the fight against corruption and organised crime, migration, environment, energy, climate change, transport, employment and social affairs, education and agriculture. The Strategic Partnership Agreement brings the partnership and cooperation to a more strategic level.

The Agreement must be signed before it can be concluded on behalf of the Union.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 37 thereof,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 212(1), in conjunction with Article 218(5) and the second subparagraph of Article 218(8) thereof³,

Having regard to the joint proposal from the European Commission and the High Representative of the Union for Foreign Affairs and Security Policy,

Whereas:

- (1) On 29 November 2012 the Council authorised the Commission and the High Representative to open negotiations with Japan for a framework agreement between the European Union and Japan.
- (2) The negotiations were successfully concluded in April 2018.
- (3) The objective of the Agreement is to strengthen cooperation and dialogue across a broad range of bilateral, regional and multilateral issues.
- (4) Therefore, the Agreement should be signed on behalf of the Union, subject to its conclusion at a later date.
- (5) In view of the importance of implementing the Agreement as soon as possible after signature, parts of the Agreement should be applied provisionally.
- (6) A declaration to be made by the European Union upon the signing of the Agreement will clarify that Article 47(3) of the Agreement is to be interpreted in a manner that is consistent with Article 25 ‘Provisional application’ of the Vienna Convention on the Law of Treaties and should be approved,

HAS ADOPTED THIS DECISION:

Article 1

1. The signing of the Strategic Partnership Agreement between the European Union and its Member States, of the one part, and Japan, of the other part, is hereby approved on behalf of the Union, subject to the conclusion of the said Agreement.
2. The text of the Agreement is attached to this Decision.

³ OJ L[...], [...], p. [...].

Article 2

1. The Declaration by the European Union on Article 47(3) of the Agreement is hereby approved on behalf of the Union.
2. The text of the Declaration by the European Union on Article 47(3) of the Agreement is attached to this Decision.

Article 3

The Secretariat General of the Council shall establish the instrument of full powers to sign the Agreement, subject to its conclusion, for the person(s) indicated by the negotiators of the Agreement.

Article 4

1. Pending its entry into force, in accordance with Article 47 of the Agreement and subject to the notifications provided for therein, the following articles of the Agreement shall be applied provisionally between the Union and Japan:

Articles 1, 2, 3, 4, 5(1), 11, 12, 13, 14, 15 (with the exception of paragraph 2(b)), 16, 17, 18, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 37, 38(1), 39, 40, 41, 42 (with the exception of paragraph 2(c)), 43, 44, 45, 46, 47, 48(3), 49, 50, 51.

2. The date from which the parts of the Agreement referred to in the second subparagraph of paragraph 1 of this Article are to be provisionally applied shall be published in the *Official Journal of the European Union* by the General Secretariat of the Council.

Article 5

This Decision shall enter into force on the day following that of its adoption.

Done at Brussels,

For the Council
The President