



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 conclusion, on behalf of the European Union, 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.

Following the adoption of the Council Decision on the signing and provisional application of the Strategic Partnership Agreement on [...], the Agreement was signed on [...].

The High Representative and the Commission consider that the objectives set by the Council in its directives on the negotiation of the Agreement have been met and that the Agreement can be submitted for conclusion. The present joint proposal concerns the legal instrument concluding 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 with 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 by 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(6) TFEU provides that the Council, on a proposal by the negotiator, shall adopt a decision concluding the agreement.

Article 218(6)(a) TFEU provides that, where an agreement establishes an institutional framework by organising cooperation procedures, the Council shall adopt a decision concluding the agreement after obtaining the consent of the European Parliament.

The Strategic Partnership Agreement establishes an institutional framework by organising cooperation procedures, namely a Joint Committee with the objective of coordinating the overall partnership which is built upon this Agreement.

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

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

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. 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) provided for in a legally binding Union act, or (iii) 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.

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

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COUNCIL DECISION

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

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(6)(a) and the second subparagraph of Article 218(8) thereof,

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

Having regard to the consent of the European Parliament,

Whereas:

- (1) In accordance with Council Decision [XXX] of [...]³, the Strategic Partnership Agreement between the European Union and its Member States, of the one part, and Japan, of the other part ('the Agreement') was signed on [...], subject to its conclusion at a later date.
- (2) The objective of the Agreement is to strengthen cooperation and dialogue across a broad range of bilateral, regional and multilateral issues.
- (3) The Agreement should be approved on behalf of the Union,
- (4) The Declaration by the European Union on Article 47(3) of the Agreement was approved by Council Decision [xxx] of [...].

HAS ADOPTED THIS DECISION:

Article 1

1. 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.

2. The text of the Agreement and of the Declaration by the European Union on Article 47(3) of the Agreement as approved by Council Decision [XXX] of [...], are attached to this Decision.

³ Council Decision (EU) 2018/ ... of ... 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 OJ L [...], [...], p. [...].

Article 2

The High Representative of the Union for Foreign Affairs and Security Policy shall co-chair the Joint Committee provided for in Article 42 of the Agreement.

Article 3

The President of the Council shall designate the person empowered to exchange the instrument confirming the completion of approval and ratification by the Union Party provided for in Article 47(1) of the Agreement, in order to express the consent to be bound by the Agreement.

Article 4

This Decision shall enter into force on the date of its adoption⁴.

Done at Brussels,

*For the Council
The President*

⁴ The date of entry into force of the Agreement will be published in the *Official Journal of the European Union* by the General Secretariat of the Council.