



Brussels, 22.2.2019
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2019/0055 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be adopted, on behalf of the European Union in the Joint Committee established by the Strategic Partnership Agreement between the European Union and its Member States, of the one part, and Japan, of the other part, regarding the adoption of its Rules of Procedure

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

The proposal concerns the decision establishing the position to be adopted on behalf of the Union in the Joint Committee established by the Strategic Partnership Agreement between the European Union and its Member States, of the one part, and Japan, of the other part, in connection with the envisaged adoption of a decision on the Rules of Procedure of the Joint Committee.

2. CONTEXT OF THE PROPOSAL

2.1. The EU-Japan Strategic Partnership Agreement

The Strategic Partnership Agreement between the European Union and its Member States, of the one part, and Japan, of the other part ('the Agreement') aims to strengthen the partnership between the EU and its Member States and Japan and to deepen and enhance bilateral cooperation on issues of mutual interest, reflecting shared values and common principles. This will be done through measures such as intensifying high-level dialogue. The Agreement will create a coherent, legally binding framework for the EU's relations with Japan. The Agreement was signed in Tokyo on 17 July 2018 and is provisionally applied as of 1 February 2019.

2.2. The Joint Committee

The Joint Committee is set up by Article 42 of the Agreement. Its main task is to coordinate the overall partnership which is built upon the Agreement, and to ensure the proper functioning and effective implementation of the Agreement. The Joint Committee's other functions include: being a forum to explain any relevant changes to policies, programmes or competencies relevant to the Agreement; deciding on additional areas of cooperation that are not listed in the Agreement, provided that they are consistent with the aims of the Agreement; and endeavouring to resolve disputes which might arise from interpreting, applying or implementing the Agreement.

The Joint Committee is to make recommendations and adopt decisions, where appropriate, and facilitate specific aspects of cooperation based on the Agreement. The Joint Committee operates by consensus and should meet once a year in Tokyo and Brussels alternately. The Joint Committees is to adopt its rules of procedure.

2.3. The envisaged act of the Joint Committee

The purpose of the envisaged act is to adopt, in accordance with Article 42(5) of the Agreement, the rules of procedure underpinning the organisation of the Joint Committee to allow for the implementation of the Agreement.

3. POSITION TO BE ADOPTED ON BEHALF OF THE UNION

The position to be adopted on behalf of the Union should aim at the adoption of the rules of procedure of the Joint Committee. The position should be based on the draft decisions of the Joint Committee.

4. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

4.1. Procedural legal basis

4.1.1. Principles

Article 218(9) of the Treaty on the Functioning of the European Union (TFEU) provides for decisions establishing ‘the positions to be adopted on the Union’s behalf in a body set up by an agreement, when that body is called upon to adopt acts having legal effects, with the exception of acts supplementing or amending the institutional framework of the agreement.’

The concept of ‘*acts having legal effects*’ includes acts that have legal effects by virtue of the rules of international law governing the body in question. It also includes instruments that do not have a binding effect under international law, but that are ‘*capable of decisively influencing the content of the legislation adopted by the EU legislature*’¹.

4.1.2. Application to the present case

The Joint Committee is a body set up by the Strategic Partnership Agreement between the European Union and its Member States, of the one part, and Japan, of the other part.

The act the Joint Committee is called upon to adopt constitutes an act having legal effects. This is because in accordance with Article 42(2)(g) of the Agreement, the Joint Committee is to adopt decisions which are binding upon the Parties to the Agreement.

The envisaged act does not supplement or amend the institutional framework of the Agreement.

The procedural legal basis for the proposed decision, therefore, is Article 218(9) TFEU.

4.2. Substantive legal basis

4.2.1. Principles

The substantive legal basis for a decision under Article 218(9) TFEU depends primarily on the objective and content of the envisaged act in respect of which a position is taken on the Union's behalf. If the envisaged act pursues two aims or has two components and if one of those aims or components is identifiable as the main one, whereas the other is merely incidental, the decision under Article 218(9) TFEU must be founded on a single substantive legal basis, namely that required by the main or predominant aim or component.

4.2.2. Application to the present case

Rules of procedure concern the general functioning of a body set up on the basis of an agreement. Therefore, the field within which the envisaged decision falls must be determined in the light of the Agreement as a whole².

Taking into account the number and nature of the CFSP provisions in the Agreement, the main objective and content of the envisaged act relate to economic, financial and technical cooperation with third countries. This is the case despite the fact that the signing of the Agreement was based on Article 37 TEU and Article 212(1) TFEU. The assessment has changed in light of the subsequent Court ruling in case C-244/17 Commission v Council (Kazakhstan). Therefore, the substantive legal basis of the proposed decision is Article 212(1) TFEU.

¹ Case C-399/12 Germany v Council (OIV), ECLI:EU:C:2014:2258, paragraphs 61-64.

² Case C-244/17 Commission v Council (Kazakhstan), ECLI:EU:C:2018:662, paragraph 40.

4.3. Conclusion

The legal basis of the proposed decision should therefore be Article 212(1) TFEU read in conjunction with Article 218(9) TFEU.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 212(1), in conjunction with Article 218(9), thereof,

Having regard to the proposal of the European Commission,

Whereas:

- (1) The Strategic Partnership Agreement between the European Union and its Member States, of the one part, and Japan, of the other part³ ('the Agreement') was signed in Tokyo on 17 July 2018 and is provisionally applied as of 1 February 2019.
- (2) Article 42(1) of the Agreement establishes a Joint Committee to coordinate the overall partnership which is built upon the Agreement ('the Joint Committee').
- (3) Article 42(5) of the Agreement provides that the Joint Committee is to adopt its rules of procedure.
- (4) The Joint Committee's rules of procedure should be adopted as soon as possible in order to ensure the effective implementation of the Agreement.
- (5) It is appropriate to establish the position to be taken on the Union's behalf within the Joint Committee as the Rules of Procedure will determine the functioning of the Joint Committee, which is responsible for administering the Agreement and ensuring its proper implementation.

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on behalf of the Union in the first meeting of the Joint Committee established pursuant to Article 42 of the Strategic Partnership Agreement between the European Union and its Member States, of the one part, and Japan, of the other part, regarding the adoption of its Rules of Procedure, shall be to support the adoption by the Joint Committee of its Rules of Procedure as set out in the draft Decision of the Joint Committee attached to this Decision.

³ OJ L 216, 24.8.2018, p. 4.

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*