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Subject: Revised Chair Package on the authorisation to open negotiations for a
Framework Agreement between the European Union and Japan
- Silence procedure

Delegations will find attached the declassified version of the above document.

The text of this document is identical to the previous version.



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THE EUROPEAN UNION

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NOTE

From :	Chair of the Asia/Oceania Working Party
To :	Asia/Oceania Working Party
No. Cion prop. :	12840/12 - RESTREINT UE
Subject :	Revised Chair Package on the authorisation to open negotiations for a Framework Agreement between the European Union and Japan - Silence procedure

1. At the Asia/Oceania Working Party meetings of 25 July, 19 September and 7 November 2012, delegations had several exchanges of views on the draft negotiating mandate for a Framework Agreement between the European Union and Japan, on the basis of a presentation by the EEAS and the comments submitted by the Member States.
2. The Chair hereby distributes a revised package of texts for agreement at Working Party level (changes in bold, underlined and red). If no objections are communicated in writing to the Chair and the General Secretariat of the Council by Monday 26 November 2012, 10.00 hrs (Brussels time), this package will be forwarded to the Council via COREPER for adoption.

3. The revised Chair package contains the following:

- revised draft negotiating directives based on discussions in the Asia/Oceania Working Party on 25 July, 19 September and 7 November 2012 respectively, as well as written comments submitted by delegations (Annex I);
- a draft Council decision (Annex II);
- a draft decision of the representatives of the governments of the Member States, meeting within the Council (Annex III);
- a draft Joint Council and Commission statement (Annex IV).

This package of texts exactly replicates the established recent precedents adopted by the Council in relation to the issue of the nature of the agreement.

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Draft**Directives for the negotiation of a Framework Agreement
between the European Union and Japan****A. NATURE OF THE AGREEMENT**

Following the expiry of the 2001 EU-Japan Action Plan, the proposed EU-Japan Framework Agreement should create a coherent legally-binding overall framework for the EU's relations with Japan. In terms of scope, the Framework Agreement should cover political, global and sectoral cooperation in a comprehensive manner, as foreseen by the 2011 Summit conclusions.

The Framework Agreement should provide enabling or 'framework' provisions for enhanced consultation, cooperation and joint action between the EU and Japan on political, global and sectoral issues, both bilaterally and in multilateral settings. Where appropriate, and if no specific agreement exists or is envisaged, detailed cooperation provisions may be included in the Framework Agreement.

Shared values should be expressed through binding political clauses which are a key element of EU's similar agreements with all partner countries. Accordingly, the EU and Japan should project their commitments in areas such as human rights, non-proliferation and the fight against terrorism, fully in line with standard clauses in similar agreements, and tailored where necessary to the case of Japan.

All existing sector-specific agreements between the EU and Japan should remain in place. The Framework Agreement, FTA and other existing or future sector-specific agreements should form part of a common institutional framework. There should be a clear legal and institutional linkage between the Framework Agreement on one hand, and the Free Trade Agreement on the other, in line with the EU Common Approach. The framework for the administration of the agreements should be coherent.

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Where relevant, new and updated provisions should be based on those contained in other recent EU agreements of this kind, which should be suitably adapted for the case of Japan.

The special position of the United Kingdom, Ireland and Denmark as regards matters that fall within the scope of Part Three, Title V of the Treaty on the Functioning of the European Union shall be fully respected.

The legal nature of the Agreement will be determined at the end of the negotiations on the basis of an analysis of the precise scope of the coverage of the individual provisions.

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B. PROPOSED CONTENT OF THE AGREEMENT

Preamble

The Preamble of the proposed Framework Agreement should include references to:

- Shared values and commitments, **including in the field of human rights**;
- Increasingly close ties between the EU and Japan and comprehensive scope of relations, covering political, global and sectoral issues;
- Importance of maintaining overall coherence in the relations;
- Growing worldwide interdependence and usefulness for the EU and Japan to develop common approaches to global **and regional** challenges.

The Preamble should also contain references to the shared policy goals and international commitments of the parties.

Basis for cooperation

This agreement is based on shared values and commitments, which should be expressed in the five binding political clauses which underpin all comprehensive relationships between the EU and third countries:

- Human rights, democracy and rule of law (HR);
- Non-proliferation of weapons of mass destruction (WMD);
- Fight against terrorism (CT);
- Prosecution of those accused of the most serious crimes of concern to the international community (ICC);
- Small arms and light weapons (SALW).

A provision should be included stipulating that respect for human rights, democracy and rule of law guide the domestic and foreign policies of the parties. The HR clause is defined as an essential element of the Agreement. The first paragraph of the WMD clause also constitutes an essential element.

The agreement should also reaffirm the shared commitment to promoting sustainable development in all its dimensions; promoting balanced global economic growth and supporting growth enhancing measures; addressing global environmental challenges, in particular climate change; cooperating to alleviate poverty; ensuring global financial stability; and supporting effective multilateralism.

Aims of cooperation

It is proposed to use the Joint High-Level Group report to the 2011 EU-Japan Summit and its annexes, in particular the *List of Issues*, as a point of departure to determine the scope and aims of future cooperation. The following aims should be included; they may be adjusted and expanded where necessary:

- Strengthening dialogue and cooperation to support and promote our shared values, in particular, by closer coordination in all relevant regional and international fora and organisations to foster human rights and democratic values worldwide;
- Deepening in a comprehensive manner the overall partnership between the EU and Japan on political, global and sectoral issues of common interest;
- Strengthening cooperation in our approach to global challenges in line with our shared aims, notably by promoting multilateral solutions to common problems;
- Raising the profile of the EU and Japan in each others' regions.

Areas of cooperation

The agreement should include provisions fostering cooperation and consultations on the areas listed below. Other areas may be included in the course of negotiations with a view to fulfilling the objective of strengthening political, global and sectoral cooperation with Japan.

1. Political dialogue and cooperation

EU and Japan should reaffirm their common values and develop a common approach to addressing global challenges with the aim of promoting international peace and security, taking account of the EU's and Japan's common interest in - and special responsibility in terms of - global and regional peace, stability and prosperity.

The EU and Japan should cooperate bilaterally and also seek to coordinate their positions in the relevant regional and multilateral fora, i.a. in the UN, G8, G20, ASEM.

A provision should be included outlining the structure of the Political Dialogue between the EU and Japan.

2. Cooperation on global development, humanitarian assistance and disaster management

Common commitment to poverty eradication and to cooperation with a view to fulfilling international commitments on aid and development effectiveness.

Common commitment to enhanced cooperation in humanitarian assistance and disaster management, with a view to preventing, or more effectively addressing, man-made and natural disasters so as to also promote disaster resilience agenda at international level.

Strengthening of cooperation in regional and international fora, with a view to enhancing aid and development effectiveness on the ground.

3. Cooperation in the area of economic development

Global economic and financial issues: provisions should be included on maintaining close policy coordination bilaterally and in international fora to underpin the recovery in the world economy.

Trade and investment issues: in light of its comprehensive scope, the Framework Agreement should include broad enabling provisions reaffirming the shared commitment to the multilateral trading system and **to developing to the progressive and reciprocal liberalization of** trade and investment between the EU and Japan. **In this context, the Framework Agreement should also reaffirm the commitment of both Parties to address issues of mutual concern in a spirit of mutual benefit.** Detailed provisions in this field should be set out in the Free Trade Agreement.

Research and Innovation: the aim of this provision should be to enhance cooperation on research and innovation, building on the existing science and technology agreement.

Transport: provisions should be included on enhancing bilateral cooperation on aviation, railway, maritime, clean and urban transport, and innovative transport technologies.

Industrial cooperation: provisions should be included on fostering industrial cooperation and internationalisation of SMEs.

Other sectors in the area of economic development: the agreement should seek to foster cooperation on other sectors and policy areas including satellite navigation, good governance in the tax area and financial cooperation.

4. Cooperation in the field of sustainable development, energy and transport

Environment and natural resources: cooperate with the aim of ensuring that natural resources are used in a sustainable way and to curbing man-made destruction of the natural environment.

Energy: this provision should provide the basis for enhanced bilateral and multilateral cooperation on all aspects of energy policies and technologies.

Climate change: cooperate to promote the development of a sustainable low carbon economy.

Other sectors in the field of sustainable development: the agreement should seek to foster cooperation on other sectors and policy areas such as agriculture (**including dialogue in the areas of SPS standards and the protection of Geographical Indications within the context of the relevant FTA mechanisms**), rural development and forestry, maritime policy and fisheries, tourism, employment and social affairs. The cooperation provisions in the Framework Agreement should be complementary to the trade and sustainable development provisions in the Free Trade Agreement.

5. Cooperation in the area of justice, freedom and security

Security: prevention of and fight against transnational organised crime, cybercrime, other illegal activities and terrorism, including ratification of international anti-terrorism instruments and law enforcement cooperation.

Migration, asylum, visas and border issues: migration – covering both legal and illegal migration – asylum, integration, visas, border issues and document security (taking into account the standard clause on migration).

Illicit drugs: cooperation in the area of illicit drugs with the aim of reducing their demand and supply chains.

Corruption, money laundering and terrorism financing: cooperation to address corruption and prevention of the use of financial systems to launder the proceeds of criminal activities and of the financing of terrorism.

Judicial and law enforcement cooperation: further development of judicial and law enforcement cooperation, with a cross-reference to the EU-Japan Agreement on Mutual Legal Assistance in Criminal Matters.

Protection of personal data: ensuring adequate standards of privacy and data protection in the context of exchanges of all personal information.

Diplomatic and consular protection: specifying that consular and diplomatic authorities of any Member State can provide protection to nationals of any other Member State in line with Articles 20 and 23 of the Treaty on the Functioning of the European Union.

6. Cooperation in the area of education and culture

The agreement should include provisions for enhanced cooperation on education, culture, audiovisual and media, including the promotion of people-to-people and cultural exchanges.

Institutional framework and final provisions

The Framework Agreement should create a coherent legally-binding overall framework for the EU's relations with Japan. Sector-specific agreements should remain in place. Where appropriate, the Framework Agreement should also include cross-references to existing agreements.

There should be a clear legal and institutional linkage between the Framework Agreement and the Free Trade Agreement in line with the EU Common Approach.

The agreement should also include cross-reference to existing agreements on customs and competition. It may include broad enabling provisions in these fields.

The provisions relating to the role and functioning of the Joint Committee should ensure full complementarity with the structures and procedures established under sectoral agreements to ensure a coherent and efficient institutional framework.

The provisions relating to non-execution and dispute-settlement of the Framework Agreement should be in line with those found in other recent EU international agreements.

The agreement shall be concluded in all official languages of the EU, all language versions being equally authentic.

A provision should be included stipulating that nothing in the Framework Agreement should cause prejudice to national or EU laws and regulations regarding public access to official documents.

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Council Decision of ... authorising the European Commission and the High Representative of the Union for Foreign Affairs and Security Policy to negotiate, on behalf of the European Union, the provisions of a Framework Agreement between the European Union and its Member States, of the one part, and Japan, of the other part, that fall within the competence of the European Union

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 218(3) and (4) thereof,

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

Whereas negotiations should be opened with a view to concluding a Framework Agreement between the European Union and its Member States, of the one part, and Japan, of the other part,
HAS ADOPTED THIS DECISION:

Article 1

1. The Commission and the High Representative of the Union for Foreign Affairs and Security Policy (High Representative) are hereby authorised to negotiate, on behalf of the European Union, the provisions of a Framework Agreement between the European Union and its Member States, of the one part, and Japan, of the other part (the Agreement), that fall within the competence of the Union.
2. The negotiations shall be conducted on the basis of the negotiating directives adopted by the Council.

Article 2

1. The Commission shall be the head of the Union's negotiating team.

The Commission shall negotiate the provisions of the Agreement as set out in the negotiating directives and which, in accordance with the Treaties, fall within the competence of the Union, either as matters falling within the Union's exclusive competence or as matters in respect of areas of supporting or shared competence to the extent that the Union has exercised its competence, except for those relating to the field of the common foreign and security policy.

For this purpose, exercised shared competence shall include measures adopted by the Union from the date of adoption of this Decision until the conclusion of the negotiations by the initialling of the text representing the outcome of the negotiations.

2. The High Representative shall negotiate, in relation to matters within the common foreign and security policy as set out in the negotiating directives, the provisions of the Agreement concerning the general principles and essential elements of the Agreement and the provisions relating to political dialogue and cooperation.

Article 3

The negotiations should be conducted in consultation with the Council Working party on Asia-Oceania.

Article 4

This Decision is addressed to the Commission and the High Representative.

Done at Brussels,

For the Council

The President

DRAFT

Decision of the representatives of the governments of the member states, meeting within the Council, of authorising the European Commission to negotiate, on behalf of the Member States, the provisions of a Framework Agreement between the European Union and its Member States, of the one part, and Japan, of the other part, that fall within the competences of the Member States

THE REPRESENTATIVES OF THE GOVERNMENTS OF THE MEMBER STATES, MEETING WITHIN THE COUNCIL,

WHEREAS the European Commission, which can be assisted for this purpose by the Presidency of the Council, should be authorised to negotiate, on behalf of the Member States, the provisions of a Framework Agreement between the European Union and its Member States, of the one part, and Japan, of the other part, that fall within the competences of the Member States,

HAVE ADOPTED THIS DECISION:

Article 1

1. The Representatives of the Governments of the Member States hereby authorise the Commission to negotiate, on behalf of the Member States, the provisions of a Framework Agreement between the European Union and its Member States, of the one part, and Japan, of the other part, that fall within the competences of the Member States. A representative of the Presidency of the Council will accompany the Commission in the negotiations for matters falling within the competences of the Member States.
2. Paragraph 1 shall be without prejudice to future decisions of the Member States relating to the designation of their representative on matters falling within their competences.
3. The negotiations shall be conducted on the basis, where applicable, of the negotiating directives adopted by the Council.

Article 2

The negotiations shall be conducted in consultation with the Council Working Party on Asia-Oceania, which, as regards areas that fall within the competences of the Member States, shall be briefed on proposed negotiating directives in advance of each set of negotiations, and shall be reported to on the progress of negotiations after each meeting.

Article 3

This Decision is addressed to the Commission.

Done at Brussels,

For the representatives of the governments of the Member States
The President

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Joint Council and Commission Statement

"In reference to the Negotiating Directives for a Framework Agreement between the European Union and its Member States and Japan, which start from the presumption that the likely outcome of the negotiations would be a mixed agreement, the Council and the Commission confirm that the final legal nature of the Agreement will be determined at the end of the negotiations on the basis of an analysis of the precise scope of the coverage of the individual provisions".

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