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PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	25 August 2022
To:	General Secretariat of the Council
No. Cion doc.:	COM(2022) 418 final
Subject:	Proposal for a COUNCIL DECISION approving the modification of Annexes I, II and III to the Agreement between the European Union and Japan on mutual legal assistance in criminal matters

Delegations will find attached document COM(2022) 418 final.

Encl.: COM(2022) 418 final

EUROPEAN
COMMISSION

Brussels, 25.8.2022
COM(2022) 418 final

2022/0245 (NLE)

Proposal for a

COUNCIL DECISION

approving the modification of Annexes I, II and III to the Agreement between the European Union and Japan on mutual legal assistance in criminal matters

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

This proposal concerns an amendment to Annexes I, II and III to the Agreement between the European Union and Japan on mutual legal assistance in criminal matters[1].

The Agreement aims to establish more effective cooperation between the European Union and Japan on mutual legal assistance in criminal matters. Under the Agreement, at the request of the requesting state the requested state is required to provide mutual legal assistance in connection with investigations, prosecutions and other proceedings (including judicial proceedings) in criminal matters.

The Agreement was signed on 30 November and 15 December 2009, subject to its conclusion. It was concluded by Council Decision 2010/616/EU of 7 October 2010[2] and entered into force on 2 January 2011.

The annexes to the Agreement list the Central Authorities of the Contracting Parties (Annex I); the authorities which are competent under the laws of the States to originate requests for mutual legal assistance pursuant to the Agreement (Annex II); and the languages accepted (Annex III).

In accordance with Article 30 of the Agreement, the annexes to the Agreement form an integral part of the Agreement.

It is now timely to update the annexes to the Agreement, since some changes on the part of Member State national authorities need to be taken into account. Member States have communicated the need for such changes to the General Secretariat of the Council. This Decision includes changes proposed by Member States.

In addition, Council Regulation (EU) 2017/1939[3] entered into force on 20 November 2017. Article 104(3) of that Regulation states that international agreements with one or more third countries concluded by the Union or to which the Union has acceded in accordance with Article 218 of the Treaty on the Functioning of the European Union in areas that fall under the competence of the European Public Prosecutor's Office (EPPO) are to be binding on the EPPO. In light of this provision, an update of the annexes to the Agreement is necessary to ensure that the EPPO, in the exercise of its competences as provided for in Articles 22, 23 and 25 of Council Regulation (EU) 2017/1939, is recognised as an authority competent to originate, send, receive and respond to requests for mutual legal assistance pursuant to the Agreement.

• Consistency with existing policy provisions in the policy area

This is the only EU-level international agreement on judicial cooperation in criminal matters that includes in its annexes a list of competent and central authorities and acceptable languages. Furthermore, Article 104(3) of Council Regulation (EU) 2017/1939 provides the legal basis for the recognition of the EPPO as a central and competent authority for the purpose of the Agreement.

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1 OJ L 39, 12.2.2010, p. 20.

2 OJ L 271, 15.10.2010, p. 3.

3 Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO'), OJ L 283, 31.10.2017, p. 1.

- **Consistency with other Union policies**

n/a

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

This proposal is based on Article 82(1)(d) in conjunction with Article 218(6)(a) of the Treaty on the Functioning of the European Union (TFEU).

- **Subsidiarity (for non-exclusive competence)**

Only the Council, acting on the proposal from the Commission, can amend the annexes to the Agreement.

- **Proportionality**

This proposal is limited to what is necessary to ensure that the annexes to the Agreement are up to date. It does not go beyond what is necessary for achieving the objectives pursued.

- **Choice of the instrument**

Council Decision pursuant to Article 218(6) TFEU.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

n/a

- **Stakeholder consultations**

This Decision includes modifications concerning national authorities to be included in the annexes to the Agreement as proposed by Member States.

- **Collection and use of expertise**

n/a

- **Impact assessment**

No impact assessment was carried out because the proposal relates to the existing Agreement between the EU and Japan on mutual legal assistance in criminal matters, the annexes of which are now being brought up to date to take into account factual changes proposed by Member States and (for the EPPO) the Commission to Annexes I, II and III of the Agreement.

- **Regulatory fitness and simplification**

n/a

- **Fundamental rights**

The proposal has no consequences for the protection of fundamental rights.

4. BUDGETARY IMPLICATIONS

n/a

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

n/a

- **Explanatory documents (for directives)**

n/a

- **Detailed explanation of the specific provisions of the proposal**

This proposal includes a modified text of Annexes I, II and III to the Agreement, which set out: the list of the Central Authorities of the Contracting Parties (Annex I); the authorities competent under the laws of the States to originate requests for mutual legal assistance pursuant to the Agreement (Annex II); and the languages accepted (Annex III). The annexes also include a new body of the Union – the European Public Prosecutor's Office.

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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 82(1), point (d), in conjunction with Article 218(6), point (a), thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament[4],

Whereas:

(1) The Agreement between the European Union and Japan on mutual legal assistance in criminal matters[5] (the 'Agreement') was concluded by Council Decision 2010/616/EU[6] and entered into force on 2 January 2011.

(2) The annexes to the Agreement list the Central Authorities of the Contracting Parties (Annex I); the authorities competent to originate requests for mutual legal assistance pursuant to the Agreement (Annex II); and the languages accepted (Annex III). In accordance with Article 30 of the Agreement, Contracting Parties to the Agreement may modify the annexes by mutual consent without amending the Agreement.

(3) Since some changes on the part of Member State national authorities need to be taken into account and to ensure that the European Public Prosecutor's Office is recognised as an authority competent to originate, send, receive and respond to requests for mutual legal assistance pursuant to the Agreement, it is necessary to update those annexes to the Agreement.

(4) In accordance with Article 3 and Article 4a(1) of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, Ireland has notified [, by letter of …,] its wish to take part in the adoption and application of this Decision.] **OR** [In accordance with Articles 1 and 2 [and Article 4a(1)] of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, Ireland is not taking part in the adoption of this Decision and is not bound by it or subject to its application.]

(5) In accordance with Articles 1 and 2 of the Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the

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4 OJ C , , p. .
5 OJ L 39, 12.2.2010, p. 20.
6 OJ L 271, 15.10.2010, p. 3.

European Union, Denmark is not taking part in the adoption of this Decision and is not bound by it or subject to its application,

HAS ADOPTED THIS DECISION:

Article 1

The modification of Annexes I, II and III to the Agreement is hereby approved on behalf of the Union.

The text of the modified Annexes I, II and III to the Agreement is attached to this Decision.

Article 2

The Commission shall proceed, on behalf of the European Union, to the notification pursuant to Article 30 of the Agreement, in order to express the consent of the European Union to the modification of Annexes I, II and III to the Agreement.

Article 3

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

Done at Brussels,

For the Council
The President