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NOTE

From: General Secretariat of the Council

To: Delegations

Subject: ANNEX to the Recommendation for a COUNCIL DECISION authorising the opening of negotiations on behalf of the European Union for the conclusion of an Agreement between the European Union, of the one part, and Japan, of the other part, on the participation of Japan in Union programmes and of a protocol on the association of Japan to Horizon Europe – the Framework Programme for Research and Innovation (2021-2027)

Changes in comparison to doc. 7593/23 ADD 1 are marked in ~~striketrough~~ for deletions and in **bold underline** for additions.

ANNEX

DIRECTIVES FOR THE NEGOTIATION OF AN AGREEMENT BETWEEN the European Union, of the one part, and Japan, of the other part, on the participation of Japan in Union programmes and of a protocol on the association of Japan to Horizon Europe – the Framework Programme for Research and Innovation (2021-2027).

1. The agreement should provide for the terms and conditions of the participation of Japan to any Union programme. It shall:
 - (a) ensure a fair balance as regards the contributions, including the financial contribution, and benefits of the third country participating in the Union programmes;
 - (b) lay down the conditions of participation in the programmes, including the calculation of the financial contributions to individual programmes and their administrative costs. These contributions shall constitute internal assigned revenues in accordance with Article 21 (5) of the Financial Regulation¹;
 - (c) not confer to the third country any decision-making power in respect of the Union programmes;
 - (d) guarantee the rights of the Union to ensure sound financial management and to protect its financial interests.

¹ Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012, (OJ L 193, 30.7.2018, p. 1).

2. The agreement should foresee that possible future associations of Japan to further Union programmes should take the form of individual protocols to the agreement. The Commission should in negotiations explore the possibility for such protocols to be adopted through a simplified procedure by a body established under the agreement. The general principles relevant for participation to any Union programme would be set by this agreement.
3. The Protocol on the participation in Horizon Europe should provide for specific terms and conditions of the participation of Japan to Pillar II ‘Global Challenges and European Industrial Competitiveness’ of Horizon Europe – the Framework Programme for Research and Innovation (2021-2027), in line with the Regulation (EU) 2021/695 of the European Parliament and of the Council¹, Council Decision (EU) 2021/764² and any other rules pertaining to the implementation of the Programme in their most up to date versions.
4. The agreement should determine the level of the financial contribution payable by Japan to the general budget of the Union.
5. The agreement should **foresee that** ~~provide for an observer status of Japan~~ **may be invited as observer** to the Horizon Europe Programme Committee in function of Japan’s scope of association to the Programme (thus only for those configurations of the Programme Committee, which are involved in implementation of Pillar II).
6. The Protocol on the participation in Horizon Europe should provide as far as possible for a reciprocity clause ensuring reciprocal participation of legal entities established in the Union in Japan’s programme(s) equivalent to Pillar II of Horizon Europe.

¹ Regulation (EU) 2021/695 of the European Parliament and of the Council of 28 April 2021 establishing Horizon Europe – the Framework Programme for Research and Innovation, laying down its rules for participation and dissemination, and repealing Regulations (EU) No 1290/2013 and (EU) No 1291/2013 (OJ EU L 170, 12.5.2021, p. 1).

² Council Decision (EU) 2021/764 of 10 May 2021 establishing the Specific Programme implementing Horizon Europe – the Framework Programme for Research and Innovation, and repealing Decision 2013/743/EU (OJ EU L 167 I, 12.5.2021, p. 1).

7. The Protocol on the participation in Horizon Europe should recall the relevant Horizon Europe provisions related to the protection of the Union's strategic assets, interests, autonomy or security.
8. The Agreement should promote shared fundamental values and principles, including in international cooperation in research and innovation.
9. The agreement should set forth rules concerning sound financial management in relation to Union funding. In particular, the agreement should provide for the adequate protection of the financial interest of the Union, including the prevention, detection, correction and investigation of irregularities, including fraud, the recovery of funds lost, wrongly paid or incorrectly used, and, where appropriate, the imposition of administrative penalties and the recovery of money. The European Anti-Fraud Office (OLAF) may carry out administrative investigations, including on-the-spot checks and inspections. The European Public Prosecutor's Office may investigate and prosecute criminal offences against the financial interests of the Union.
10. The Commission should, during negotiations, explore the possibility to include a clause on provisional and/or retroactive application of the Agreement.
11. The agreement should be in coherence with related EU policies and objectives.
12. **If the envisaged agreement provides for a depositary, the EU negotiator should ensure that the functions of the depositary will be performed by the Secretary-General of the Council of the European Union. If the envisaged agreement does not provide for a depositary, the EU negotiator should ensure that the Secretary-General of the Council of the European Union will be entrusted with the tasks to provide to, and receive from, Japan notifications for the Union and its Member States under the agreement.**
13. **The agreement, which should be equally authentic in all official EU languages, should include a language clause to that effect.**