



Council of the
European Union

Brussels, 20 March 2023
(OR. en)

7593/23

LIMITE

RECH 98
COASI 62

COVER NOTE

From: Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director

date of receipt: 17 March 2023

To: Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union

No. Cion doc.: COM(2023) 153 final

Subject: 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)

DOCUMENT PARTIALLY ACCESSIBLE TO THE PUBLIC (21.04.2023)

Delegations will find attached document COM(2023) 153 final.

Encl.: COM(2023) 153 final



Brussels, 17.3.2023
COM(2023) 153 final

SENSITIVE*

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)

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EXPLANATORY MEMORANDUM

1. CONTEXT OF THE RECOMMENDATION

With this recommendation, the European Commission recommends that the Council of the European Union authorises the opening of negotiations between the European Union, of the one part, and Japan, of the other part, for the conclusion of an Agreement covering the participation of Japan to any Union programme and of a protocol on the association of Japan to Horizon Europe – the Framework Programme for Research and Innovation (2021-2027).

2. SCIENCE AND TECHNOLOGY COOPERATION WITH JAPAN

The European Union and Japan have a long history of fruitful cooperation in research and innovation and share a common commitment towards promoting scientific and technological research. Collaboration in science, technology and innovation (STI) plays an increasingly important role in the overall EU-Japan relations. Cooperation in research and innovation (R&I) in particular is based on the bilateral Science and Technology Cooperation Agreement signed in 2009 and entered into force in 2011¹, the EU-Japan Strategic Partnership in R&I of 2015², the EU-Japan Strategic Partnership Agreement signed in 2018 and entered into force in 2019³ and the Letter of Intent on Strengthening Cooperation in STI between the European Commission and the Cabinet Office of the Government of Japan exchanged in May 2020. In addition, cooperation on STI with Japan underpins the different ongoing sectoral initiatives, in particular the Digital Partnership (of May 2022), the Green Alliance (of May 2021) and the Partnership on Sustainable Connectivity and Quality Infrastructure (of September 2019).

In line with the Global Approach to Research and Innovation⁴, the EU's strategy on international cooperation on R&I, the EU has offered Japan the possibility of becoming associated to Pillar II 'Global Challenges and European Industrial Competitiveness' of the EU's Framework Programme (FP) for Research and Innovation 'Horizon Europe' (2021-2027). Association offers the closest form of R&I cooperation between the EU and a third country.

Japan maintains a very strong research capacity in a wide array of research fields and operates a number of the world's top research infrastructures. Japan is placed very high in terms of innovation capability in key global rankings. Japan ranks third worldwide in terms of Gross Domestic Expenditure on R&D at current PPP\$ (2019, latest year for which comprehensive data are available).⁵ Almost 80% of Gross Domestic R&I Expenditure comes from the

¹ Agreement between the European Community and the Government of Japan on cooperation in science and technology, (OJ L 90, 6.4.2011, p. 2).

² This includes: thematic cooperation in key strategic areas; putting in place framework conditions that facilitate cooperation (mechanisms for the joint funding of projects, and measures to enhance researchers' mobility); regular consultation and possible cooperation in R&I policy areas (such as Open Science); deepening strategic cooperation by frequent consultation at multiple levels (Summit, Joint S&T Committee meetings, Senior Officials meetings, Task Force meetings, thematic dialogues); and support activities and public engagement (National Contact Points in Japan and outreach activities).

³ Strategic Partnership Agreement between the European Union and its Member States, of the one part, and Japan, of the other part, (OJ L 216, 24.8.2018, p. 4).

⁴ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions on the Global Approach to Research and Innovation Europe's strategy for international cooperation in a changing world, (COM/2021/252 final).

⁵ OECD (2023), "Main Science and Technology Indicators", OECD Science, Technology and R&D Statistics (database), see the internet (<https://doi.org/10.1787/data-00182-en>).

business enterprise sector.⁶ According to 2021 figures, Japan has the third largest number of patents applications filed worldwide, and comes second in terms of resident patent applications per million population.⁷ Japan's excellent capacity in STI, in combination with national policies that support innovation and protect intellectual property rights, and a very favourable political situation, place Japan as a key STI partner for the EU in Asia and the Indo-Pacific area. However, the current level of collaboration / participation of Japanese researchers and research entities in Horizon Europe is far below its potential and the financial resources allocated by the Japanese government to support Japanese researchers under the previous R&I programme Horizon 2020 have been low.

Association would unlock a plethora of possibilities for a broader and more systematic EU-Japan collaboration in many strategic fields covered by Horizon Europe's Pillar II, such as health, climate, ocean and environmental research, Information and Communication Technology (ICT), High Performance Computing, clean hydrogen and renewable energy, circular economy, semi-conductors, connected and automated mobility, space, aviation, photonics, and critical raw materials. These are some of the priority areas where the powerful instrument of Partnerships also is used. Partnerships are initiatives in which the EU, Associated Countries, and relevant private and/or public partners commit to building a critical mass of investments and implementing them through a programme of joint activities. Association would allow Japan to join thematic partnerships of interest.

Association should have positive spill-over effects on the implementation of the EU-Japan Digital Partnership (of May 2022), with the objective of developing the next generation of semiconductors, and High-Performance Computing and Quantum technology. Through this Partnership, the EU and Japan will work together on the resilience of global supply chains, secure 5G and beyond, safe and ethical applications of Artificial Intelligence (AI). Association should be also beneficial in delivering the actions envisaged by the EU-Japan Green Alliance (of May 2021). Japan is the first country with which the EU has established a Green Alliance based on the mutual strong determination to create climate neutral, biodiversity friendly and circular and resource efficient economies. While a considerable number of activities falling under the scope of the Green Alliance have started, both sides agreed in early 2022 to identify – in a dedicated operational work-plan – a further set of concrete actions and deliverables reflecting the joint ambition and addressing the challenges of the future. Under this Alliance, the parties intend to intensify their cooperation on safe and sustainable low-carbon technologies such as renewable energy, in particular offshore wind, energy systems integration, energy markets reform, smart grids, energy storage technologies, batteries, hydrogen with a focus on renewable and low carbon hydrogen, industrial decarbonisation, Carbon Capture, Utilisation and Storage (CCUS). An association to Pillar II of Horizon Europe would provide an adequate basis for an efficient implementation of the joint ambitions, as also expressed in the frame of the EU-Japan energy dialogue

It is also worth mentioning that the European Commission, on behalf of the European Union, and the Ministry of Trade, Economy and Industry of Japan have signed a Memorandum of Cooperation (MoC) on Hydrogen on 2 December 2022. The EU and Japan are frontrunners when it comes to hydrogen technology and deployment. The implementation of the MoC will help to develop sustainable hydrogen supply chains, as well as to facilitate research, deployment and commercialisation of innovative technologies and infrastructure. In this

⁶ See the footnote 5 on page 1.

⁷ World Intellectual Property Organization (WIPO) (2022). World Intellectual Property Indicators 2022. Geneva. WIPO. DOI:10.34667/tind.47082

respect, an association of Japan to Horizon Europe (Pillar II) would provide an important collaboration platform.

In sum, the possibility for Japan of becoming associated to Pillar II 'Global Challenges and European Industrial Competitiveness' of the EU's Framework Programme (FP) for Research and Innovation 'Horizon Europe' (2021-2027) would give a considerable boost to the implementation of all the above-mentioned strategic commitments, by allowing Japanese entities to participate on par with the entities of Member States and other Associated Countries in thematic calls of interest. Moreover, an association to Horizon Europe (Pillar II) would facilitate the access and active involvement of Japanese entities and authorities in European Partnerships, where the EU, Associated Countries, and relevant private and/or public partners commit to building a critical mass of investments and implementing shared objectives through a programme of joint activities.

3. BACKGROUND - THE AGREEMENT COVERING THE PARTICIPATION OF JAPAN TO ANY UNION PROGRAMME AND THE PROGRAMME-SPECIFIC PROVISIONS

On 1 April 2022, by a Letter of Intent, Japan has expressed its formal interest to associate to Horizon Europe. Article 16(1)(d) and (2) of the Horizon Europe Regulation⁸ concerning the association of third countries to the programme provides that third countries and territories participate in the programme on the basis of an agreement covering the participation of the third country to any Union programme. Besides numerous expert/technical level talks, 6 rounds of exploratory talks were held and closed on September 12, 2022. **DELETED**

In relation to Japan, the European Commission has conducted a qualitative assessment based on the criteria applicable to countries belonging to the category defined by Article 16(1)(d) of the Horizon Europe Regulation. These criteria are the following:

- (1) a good capacity in science, technology and innovation;
- (2) commitment to a rules-based open market economy, including fair and equitable dealing with intellectual property rights, respect of human rights, backed by democratic institutions;
- (3) active promotion of policies to improve the economic and social well-being of citizens.

An assessment by the European Commission confirmed that Japan fulfils the above cumulative requirements, as explained below.

(1) As mentioned already, Japan ranks third worldwide in terms of Gross Domestic Expenditure on R&D at current PPP\$ (2019, latest year for which comprehensive data are available). Almost 80% of Gross Domestic R&I Expenditure comes from the business enterprise sector. According to 2021 figures, Japan has the third largest number of patents

⁸ 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 L 170, 12.5.2021, p.1).

applications filed worldwide, and comes second in terms of resident patent applications per million population.⁹ Japan's excellent capacity in STI, in combination with its national policies, which support innovation and protect intellectual property rights, and a very favourable political situation, place Japan as a key STI partner for the EU in Asia and the Indo-Pacific area. The 2019 Global Competitiveness Report by the World Economic Forum ranked Japan as 7th in terms of innovation capability.

(2) Japan is committed to a rules-based open market economy, including fair and equitable dealing with intellectual property rights, respect of human rights, backed by democratic institutions. Japan is the third largest economies in the world by GDP (nominal) in 2022¹⁰. The Japan's economy is open to the world, with Japan being part of major international and intergovernmental organisations (WTO, OECD, GATT, etc.).

The protection of intellectual property in Japan - which is mainly regulated by the Patent Act (Act No. 121 of 1959), the Utility Model Act (Act No. 123 of 1959), the Design Act (Act No. 125 of 1959), and the Trademark Act (Act No. 127 of 1959) - reaches a satisfactory level, a performance confirmed by the country's ranking in the World Intellectual Property Organisation's (WIPO) Global Innovation Index (Japan ranked in 2021 13th globally).

The 2022 edition of the *Freedom in the World Report*, which tracks¹¹ global trends in political rights and civil liberties for 50 years, based on a series of 25 indicators, Japan reached 96 points, out of the maximum score of 100. Already in the Strategic Partnership Agreement between the European Union and its Members States, of the one part, and Japan, of the other part (entered into force in 2019), the parties committed to uphold the shared values and principles of democracy, the rule of law, human rights and fundamental freedoms which underpin their domestic and international policies. In this regard, the parties reaffirmed the respect for the Universal Declaration of Human Rights and the relevant international human rights treaties to which they are parties.¹²

(3) The Commission also assessed that Japan actively promotes policies to improve the economic and social well-being of its citizens. This point is illustrated by Japan's high ranking (19th globally) in the UN Human Development Index for 2021. This performance is confirmed by indicators used by many international organisations, such as relevant OECD indicators¹³ in areas such as life expectancy, health, social protection, education, gender equality, or the UN's Sustainable Development Goals, among others.

In accordance with Article 16(3) of the Horizon Europe Regulation, the scope of association of each third country to the Programme has to take into account also an analysis of the

⁹ World Intellectual Property Organization (WIPO) (2022). World Intellectual Property Indicators 2022. Geneva. WIPO. DOI:10.34667/tind.47082

¹⁰ International Monetary Fund estimates based on the World Economic Outlook Database (October 2022).

¹¹ The Report produces annual scores representing the levels of political rights and civil liberties in each state and territory, on a scale from 1 (most free) to 7 (least free). Depending on the ratings, the nations are then classified as "Free", "Partly Free", or "Not Free".

¹² Article 2, Strategic Partnership Agreement between the European Union and its Member States, of the one part, and Japan, of the other part (OJ L 216, 24.8.2018) also reaffirmed by the Agreement between the European Union and Japan for an economic partnership (OJ L 330, 27.12.2018. p.3).

¹³ Such as OECD Framework for Measuring Well-Being and Progress, OECD Better Life Index.

benefits for the Union and the objective of driving economic growth in the Union through innovation.

When assessing the expected benefits for the Union of a prospective association of Japan to Horizon Europe, the Commission has considered key EU interests from the perspective of global access to scientific excellence, delivering on the policy priorities of the Union, including notably those related to green and digital transition and Sustainable Development Goals, as well as economic and political benefits. The Commission used various data and statistics sources¹⁴ and available reports on science, research and innovation.

Joining forces with the excellent researchers of Japan is expected to bring significant benefits to the Union and accelerate its work on tackling global challenges. Considering the scientific excellence of Japan in specific thematic areas, the biggest added value is expected in the areas of health research, digital technologies, hydrogen and renewable energy, advanced materials, micro- and nano-electronics and photonics. The EU already cooperates with Japan on a number of issues including climate change, connectivity, digital technologies, nuclear research. Security and defence cooperation has also started to develop positively, in particular in maritime security.

Association relations would provide the widest possible access to research talent, research infrastructures and world-leading research institutions of Japan in these areas and unlock possibilities for broader collaboration in cutting-edge technologies. Stronger scientific results in these areas would in turn help boost the Union's growth in related economic sectors and help strengthen its innovation capacity, as well as to create new quality jobs. Moreover, the regular engagement between the EU and the Japan authorities as observers within the governance structures of Horizon Europe as a result of association could further promote European values and principles globally. Fostering strategic international alliance with Japan as a like-minded country from a broader geo-political perspective would be in the interest of the Union.

When reflecting on the scope of association, the objectives of Pillar I 'Excellent Science' and Pillar III 'Innovative Europe' of the Programme were also considered: to strengthen the EU's own Science & Technology base, build-up European R&I capabilities and attract knowledge and talents to Europe, as well as enhancing the innovation ecosystems in Europe. Given these objectives and the potential implication on the competitiveness of the Union, Pillar II 'Global Challenges and European Industrial Competitiveness' with its focus on global challenges was considered the most appropriate for opening to association of Japan, without prejudice to any decisions concerning a different scope of possible future associations should it be considered in the EU's interest. Pillar II is also the pillar where EU and Japan interests converge and respond to both sides' strong political will to address together global issues such as climate change, health, energy and mobility, food, bio-economy, natural resources, ocean and environment.

¹⁴ This includes: the CORDA data base of the European Commission (concerning research projects where the EU and Japan successfully cooperated under the Union's Research and Innovation Framework Programmes, and resulting publications and peer-reviewed publications); Eurostat data on statistical classification of economic activities in the European Community (regarding value added and employment of selected European sectors where the EU and Japan successfully cooperated); the JRC's PREDICT study (concerning value added and employment trends for the economic activity of ICT); the OECD (regarding the patents applications in the EU and in Japan in the relevant sectors of excellence); and the Science, Research and Innovation performance (SRIP) reports of the EU.

Intensified collaboration between the EU and Japan under Pillar II 'Global Challenges and European Industrial Competitiveness' is expected to enhance the EU's innovativeness and competitiveness, growth and jobs creation. The multi- or interdisciplinary nature of many projects under Pillar II entails direct as well as cross-sectorial benefits of increased knowledge, which feeds into the innovation capacity of the Union. Also, in order to take into account the "objective of economic growth through innovation", the Commission proposed not to extend the scope of the association agreement to Pillar III 'Innovative Europe' of the Programme, which aims to support potential competitive enterprises (start-ups, scale-ups) through predominantly mono-beneficiary support schemes. The exploratory phase has further confirmed Japan's interest to associate specifically to Horizon Europe's Pillar II 'Global Challenges and European Industrial Competitiveness'.

Building on all the abovementioned arguments, and in order to build upon successful cooperation in science and technology between the EU and Japan, explore mutual advantages of Japan's association to Horizon Europe, a, it is hereby recommended to authorise the opening of negotiations on an agreement with the following content:

- The general principles relevant for the participation of Japan to any Union programme, including its financial contributions;
- Programme-specific terms and conditions regarding the association of Japan to Pillar II 'Global Challenges and European Industrial Competitiveness' of Horizon Europe, subject to the terms and conditions set out in Horizon Europe Regulation, Council Decision (EU) 2021/764¹⁵ and any other rules pertaining to the implementation of the Programme in their most up to date versions.

The proposed agreement will set out the general conditions applicable to any potential participation to other Union programmes, to be complemented with programme-specific terms and conditions in the form of protocols to the agreement.

Regarding the programme-specific terms and conditions providing for the association of Japan to Horizon Europe, they should provide for an association to Pillar II of Horizon Europe, as set out in Article 4(1)(b) and in accordance with Article 16(3) of the Horizon Europe Regulation.

The proposed agreement will set out fair and balanced conditions concerning the financial contribution of Japan. The agreement will include a reciprocity clause, ensuring that legal entities established in the Union will have, as far as possible, access to participate in Japanese research and innovation programmes that are equivalent to Pillar II of Horizon Europe, in accordance with the conditions laid down in the domestic legislation of Japan.

4. LEGAL BASIS

The procedural legal basis for the recommended Council decision is Article 218 (3) and (4) TFEU. The substantive legal bases are Article 212 TFEU and Article 186 TFEU, given the double equally important purpose of the envisaged agreement, i.e. to create a long-lasting general framework for Japan's participation in any Union programme and to associate Japan to the Union Framework Programme for Research and Innovation.

¹⁵ 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 167I, 12.5.2021, p.1).

Recommendation for a

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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)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 186 and 212, in conjunction with Article 218(3) and (4) thereof,

Having regard to the recommendation from the European Commission,

Whereas Japan fulfils the criteria outlined in Article 16(1)(d) of Regulation (EU) 2021/695 of the European Parliament and of the Council¹⁶, notably it has a good capacity in science, technology and innovation; it is committed to a rules-based open market economy, including fair and equitable dealing with intellectual property rights, respect of human rights, backed by democratic institutions; and it actively promote policies to improve the economic and social well-being of citizens,

Whereas the negotiations should be opened with a view to concluding an agreement on the participation of Japan in Union programmes and a protocol on the association of Japan to Horizon Europe – the Framework Programme for Research and Innovation (2021-2027),

HAS ADOPTED THIS DECISION:

Article 1

The European Commission is hereby authorised to negotiate, on behalf of the Union, an agreement on the participation of Japan in Union programmes and a protocol on the association of Japan to Horizon Europe – the Framework Programme for Research and Innovation (2021-2027).

Article 2

The negotiating directives are set out in the annex to this Decision.

Article 3

The negotiations shall be conducted in consultation with the [*Special Committee provided for in Article 218 (4) TFEU*].

¹⁶ 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 L 170, 12.5.2021, p.1).

Article 4

This Decision is addressed to the European Commission.

Done at Brussels,

*For the Council
The President*

