RESEARCH ARTICLE

The ‘green’ agreement between the European Union and Japan [version 1; peer review: awaiting peer review]

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Abstract

In the European Green Deal, the European Commission expressed its will to build alliances with European Union's (EU) partners who have a similar approach to environmental protection. The first green alliance was concluded by the EU with Japan on 27 May 2021. The aim of the paper is to analyse the content and nature of this alliance and to assess its potential effectiveness as an instrument for the implementation of the European Green Deal and its possible impact on international relations and respectively EU, national, and international legal norms in the field of the environment. As shown in this study, the first green alliance is not a model solution. On the one hand, this instrument requires a formal correction (involving Member States and relevant EU institutions in adopting any amendments in line with the principles of division of competences between the EU and its Member States and institutional balance, clarification of the nature of obligations), on the other hand, it is deeply embedded in the unique international legal framework of EU-Japanese relations. However, the first green alliance has great potential to influence the EU's relations with other third countries and the content of the resulting legal norms at various levels.

Keywords

international environmental protection, European Green Deal, green alliances, EU-Japan strategic partnership, EU-Japan Green Alliance

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Author roles: Wróbel I: Conceptualization, Formal Analysis, Investigation, Methodology, Project Administration, Resources, Supervision, Writing – Original Draft: Preparation, Writing – Review & Editing

Competing interests: No competing interests were disclosed.

Grant information: The author(s) declared that no grants were involved in supporting this work.

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How to cite this article: Wróbel I. The ‘green’ agreement between the European Union and Japan [version 1; peer review: awaiting peer review] Stosunki Międzynarodowe – International Relations 2022, 2:24 https://doi.org/10.12688/stomiedintrelat.17582.1

First published: 19 Oct 2022, 2:24 https://doi.org/10.12688/stomiedintrelat.17582.1
Introduction
As reflected in the European Green Deal\(^1\), the fight against climate change and environmental degradation is the European Union’s (EU) highest priority. All EU policies should contribute to obtaining these priorities but progress will depend on global partners, major emitters, and polluters being ready to increase their level of ambition\(^1\). However, the EU’s environmental values are shared with many like-minded global partners\(^2\). In a communication presenting the principles of the European Green Deal, the European Commission expressed its will to build alliances with partners with an approach similar to that of the EU to environmental protection and declared that green alliances would form part of its relations with Africa and other regions and countries, in particular Latin America, the Caribbean, Asia, and the Pacific\(^6\). The notion of a green alliance was not defined by the Commission which left open the question of whether they are international agreements or documents setting out political commitments. However, it is certainly intended to be an instrument enabling the EU to play a role as a world leader in areas such as the development of climate-friendly industries, clean technologies, and “green financing”\(^7\), and thus contributing to the fulfillment of the internal hopes pinned on the European Green Deal, which is the most far-reaching attempt to place climate protection at the heart of the EU’s decision-making process\(^2\). Although legally non-binding, the European Green Deal is seen as a normative agenda for the climate\(^8\). This is largely justified by the fact that some of the measures in this plan are to take the form of a legal act\(^9\) while the others should be treated as political obligations no less important for the practice of European integration. However, as Heather Grabbe pointed out, the United Nations (UN) climate mechanism has shown the limits of voluntary commitments under the old multilateral system. The extent to which the EU can be a world leader in the field of climate will therefore depend on whether it succeeds in regaining its normative ambitions and the capacity it has demonstrated as an external actor in previous decades\(^10\).

The EU concluded its first green alliance with Japan\(^1\), at the 27th EU-Japan Summit held on 27 May 2021 by videoconference. As the President of the European Council Charles Michel emphasised after the summit, Japan is a like-minded partner and a key ally for the EU\(^1\). The summit provided an opportunity to recall that 2021 marked the 20th anniversary of the EU-Japan strategic partnership. Charles Michel and the President of the European Commission Ursula von der Leyen speaking on behalf of the EU, and the Prime Minister Yoshihide Suga representing Japan, in a joint statement from this summit\(^2\), expressed their intention to continue a close and comprehensive partnership based on common interests and values. As announced by the leaders of both sides, as part of the continuation of the “flourishing partnership”\(^11\), the forces will be joined in the first place to build a more resilient, inclusive, green, and digital economy. At the heart of the joint agenda for growth and economic recovery is a green and digital transformation that will increase productivity, create new decent and high-quality jobs, reduce greenhouse gas emissions, improve resilience to climate change, and protect people and the planet from its effects. All this is intended to achieve climate neutrality (net zero greenhouse gas emissions) by 2050\(^12\). Indeed, EU and Japanese leaders recognised that climate change, environmental degradation, and biodiversity loss are interrelated and existential threats to humanity. Accordingly, they expressed their determination to create a climate-neutral and resilient, biodiversity-friendly, circular, and resource-efficient economy and to fully implement the agreement adopted in Paris on

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\(^1\) Communication from the Commission to the European Parliament, the Council, Economic and Social Committee and the Committee of the Regions. European Green Deal, Brussels, 11.12.2019, COM (2019) 640 final (hereinafter COM (2019) 640).

\(^2\) Hereinafter referred to as the EU.

\(^3\) Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. Trade Policy Review – An Open, Sustainable and Assertive Trade Policy, Brussels, 18.2.2021, COM (2021) 66 final, 12.

\(^4\) Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. An EU Strategy on Standardisation. Setting global standards in support of a resilient, green and digital EU single market, Brussels, 2.2.2022, COM (2022) 31 final, 6.

\(^5\) COM (2019) 640, 3 and 25. Cf. Joint Communication to the European Parliament and the Council. The EU strategy for cooperation in the Indo-Pacific, Brussels, 16.9.2021, JOIN (2021) 24 final, 8.

\(^6\) Mirosław Sobolewski, “Europejski Zielony Ład – w stronę neutralności klimatycznej.” Infos. Zagadnienia społeczno-gospodarcze 275, no. 9 (2020): 2.

\(^7\) Eric Ponthieu, The Climate Crisis, Democracy and Governance. Transition in Ten Steps: Action Points for Governments (Cham: Springer, 2020), 17.

\(^8\) Heather Grabbe, “Normative, protective, transformative Europe.” Digital and climate meta-policies,” in: European Futures: Challenges and Crossroads for the European Union of 2050, ed. Chad Damro, Elke Heins, Drew Scott (Abingdon - New York: Routledge, 2021) 104.

\(^9\) See Amended proposal for a Regulation of the European Parliament and of the Council on establishing a framework for achieving climate neutrality and amending Regulation (EU) 2018/1999 (European Climate Law), Brussels, 17.09.2020, COM (2020) 563 final. Cf. Kati Kulovesi, Sebastian Oberthür, “Assessing the EU’s 2030 Climate and Energy Policy Framework: Incremental change toward radical transformation?,” Review of European, Comparative and International Environmental Law 29, issue 2 (2020): 151.

\(^10\) Grabbe, “Normative, protective, transformative Europe,” 104.

\(^11\) Towards a Green Alliance to protect our environment, stop climate change and achieve green growth, 27.05.2021, https://www.consilium.europa.eu/media/49932/eu-japan-green-alliance-may-2021.pdf.

\(^12\) Charles Michel’s speech after the EU-Japan videoconference summit, 27.05.2021, https://www.consilium.europa.eu/press/press-releases/2021/05/27/remarks-by-president-charles-michel-after-the-eu-japan-summit-via-video-conference.

\(^13\) EU-Japan Summit 2021. Joint Statement, 27.05.2021, 1–2, https://www.consilium.europa.eu/media/49922/eu-japan-summit-may-2021-statement.pdf (hereinafter EU-Japan Summit 2021. Joint Statement).

\(^14\) On the results of EU-Japan economic cooperation, see e.g. Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and Committee of the Regions on the Implementation of EU Trade Agreements. 1 January 2019 - 31 December 2019, Brussels, 12.11.2020, COM(2020) 705 final (hereinafter COM(2020) 705), 11–12 and Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on Implementation and Enforcement of EU Trade Agreements, Brussels, 27.10.2021, COM(2021) 654 final, 8.

\(^15\) Cf. Joint Communication to the European Parliament, the European Council and the Council. A new EU-US agenda for global change. Brussels, 2.12.2020, JOIN (2020) 22 final, 4.
12 December 2015 by the Conference of the Parties to the United Nations Framework Convention on Climate Change (UNFCCC)\(^{16}\) (Paris Agreement) and achieve growth, including meeting the EU’s enhanced 2030 emission reduction targets and Nationally Determined Contributions (NDCs). The EU-Japan Green Alliance aims to accelerate environmental and climate action\(^{17}\).

The above assumption of the creators of the first green alliance should serve as a starting point for research on the new instrument and its practical application. The uniqueness of the partner, as well as the ambitious nature of the European Green Deal, which underlies the alliance\(^{18}\), and the related high expectations in relation to Brussels make this research area particularly important and interesting. Due to the novelty of the issue, relevant research has not yet been carried out. The aim of this paper is therefore to analyse the content and nature of the first green alliance of the EU with a third country and to assess its potential effectiveness as an instrument for the implementation of the European Green Deal and the possible impact on international relations, and above all on the shape of, respectively, EU and national and international legal norms in the field of the environment and climate. The framework of the analysis is determined by the following research questions:

- can the green alliance be a self-contained instrument of international cooperation, or should it be embedded in international legal obligations binding the EU with a given third country?
- is the content of the document called ‘the green alliance’ specific in comparison to other instruments of EU cooperation with third countries?
- did the green alliance ‘live’ as an instrument of cooperation between the EU and Japan for the first year after its conclusion?
- what results can be expected from the green alliance as an instrument of international cooperation on the example of the first such document?

In the course of the research undertaken for this paper, the hypothesis that the green alliance as an international instrument for the implementation of the European Green Deal may be an effective means of achieving the goals of the EU and may influence international relations in the direction desired by the EU is verified. The research is conducted primarily with the use of the dogmatic-legal method or more precisely with the use of analysis of documents in terms of the meaning and scope of the resulting obligations and the nature of these obligations.

**Legal framework for EU-Japan relations**

The EU-Japan strategic partnership is based on many years of cooperation and - as the EU institutions emphasize - Japan is one of the EU’s closest like-minded partners\(^{19}\). From 1 February 2019\(^{20}\), the EU-Japan strategic partnership is built on two key agreements that were signed at the EU-Japan summit in July 2018: the Strategic Partnership Agreement\(^{21}\) and the Economic Partnership Agreement\(^{22}\). The Strategic Partnership Agreement is the first-ever bilateral framework agreement between the EU and Japan. It promotes cooperation and joint action in many areas of mutual interest\(^{23}\), including regional and global challenges\(^{24}\). The latter is one of the EU’s key trade agreements\(^{25}\). In September 2019, both sides also signed a Partnership on Sustainable Connectivity and Quality Infrastructure\(^{26}\), which is the first-ever connectivity partnership concluded by the EU with a third country\(^{27}\).

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\(^{16}\) United Nations Framework Convention on Climate Change. agreed upon and adopted at New York on 9.05.1992 (Journal of Laws of the Republic of Poland of 1996, no. 53, item 238).

\(^{17}\) EU-Japan Summit 2021. Joint Statement.

\(^{18}\) Cf. Claire Godet, “An update on EU climate policy: recent developments and expectations,” in: EU Environmental Governance. Current and Future Challenges, ed. Amandine Orsini, Elena Kavvatha (Abingdon - New York: Routledge, 2021), 20.

\(^{19}\) EU - Japan strategic partnership, May 2021, 1, https://www.consilium.europa.eu/media/49921/eu-japan-2021-05-final.pdf.

\(^{20}\) See: Notice concerning the provisional application of the Strategic Partnership Agreement between the European Union and its Member States, of the one part, and Japan, of the other part (Official Journal of the EU L 23, 25.01.2019, 1) and the Notice concerning the date of entry into force of the Agreement between the European Union and Japan for an Economic Partnership (Official Journal of the UE L 9, 11.01.2019, 1).

\(^{21}\) Strategic Partnership Agreement between the European Union and its Member States, on the one part, and Japan, on the other part (Official Journal of the EU L 216, 24.08.2018, 4).

\(^{22}\) Agreement between the European Union and Japan for an Economic Partnership (Official Journal of the UE L 330, 27.12.2018, 13).

\(^{23}\) EU-Japan dialogue and cooperation covers political, foreign and security policy and other sectoral activities: democracy, the rule of law, human rights and fundamental freedoms, promotion of peace and security, crisis management, weapons of mass destruction, conventional arms, including small arms and light weapons, serious crimes of international concern and the International Criminal Court, counter-terrorism, chemical, biological, radiological and nuclear risk mitigation, international and regional cooperation and reform of the United Nations, development policy, disaster management and humanitarian action, economic and financial policy, science, technological and innovation, transport, outer space, industrial cooperation, customs, taxation, tourism, information society, consumer policy, environment, climate change, urban policy, energy, agriculture, fisheries, maritime affairs, employment and social affairs, health, judicial cooperation, combating corruption and organised crime, combating money laundering and financing of terrorism, combating illicit drugs, cooperation on cyber issues, passenger name records, migration, personal data protection, education, youth and sport, culture.

\(^{24}\) Cf. Hidetaka Yoshimatsu, “The EU-Japan free trade agreement in evolving global trade politics,” Asia Europe Journal 18 (2020): 433.

\(^{25}\) Cf. Julia Grübler, Oliver Reiter, Robert Stehrer, “On the new gold standard in EU trade integration: reviewing the EU-Japan EPA,” Empirica 48 (2021): 636–637.

\(^{26}\) The Partnership on Sustainable Connectivity and Quality Infrastructure between the European Union and Japan, 27.09.2020, https://ecas.europa.eu/sites/default/files/the_partnership_on_sustainable_connectivity_and_quality_infrastructure_between_the_european_union_and_japan.pdf.

\(^{27}\) EU-Japan summit via video conference, 27.05.2021, https://www.consilium.europa.eu/pl/meetings/international-summit/2021/05/27.
The Strategic Partnership Agreement between the EU and its Member States and Japan has a very broad scope and as such falls outside the exclusive competence of the EU, hence its mixed nature. Paragraph 1 of Article 13 indicates that the common goal is, inter alia, sustainable and balanced economic growth. In accordance with paragraph 1 of Article 17, as part of industrial cooperation, the Parties intensify the exchange of views and best practices in the field of industrial policy in areas such as, inter alia, climate change and energy efficiency. Pursuant to first sentence of paragraph 1 of Article 23, the Parties undertook to intensify the exchange of information, views and best practices on environmental policy and legislation and to strengthen cooperation in such areas as resource efficiency and biodiversity. This catalogue is open as it can be extended to other areas selected in the political dialogue. The Parties also undertook to seek to strengthen cooperation within the framework of relevant international agreements (paragraph 2 of Article 23). A separate group of provisions is devoted to climate change. The Parties also committed to cooperate, as appropriate, in the framework of the UNFCCC to achieve the objective of that Convention and to strengthen the multilateral legal frameworks, and to seek to enhance cooperation in other relevant international fora (second and third sentences of paragraph 1 of Article 24). With a view to promoting sustainable development, the Parties committed to seek cooperation by intensifying the exchange of best practices and information and, where appropriate, promoting policy coordination, on issues of mutual interest in the field of climate change (paragraph 2 of Article 24). The intensification of the exchange of experiences and good practices in the field of urban policy is also intended to meet the common challenges resulting from climate change (Article 25). In turn, enhanced cooperation in the field of agricultural policy, rural development, and forest management includes inter alia, links between policies on sustainable agriculture, rural development, and forestry, and policies on environment and climate change (paragraph 1 of Article 27). The issue of sustainable development or management also arises in the context of development policy (Art. 11), tourism (Art. 20), fisheries (Art. 28) and maritime affairs (Art. 29).

Despite the undisputed importance of the Strategic Partnership Agreements, due to its framework nature, the Economic Partnership Agreement is of strategic importance for both the EU and Japan in times of increasing protectionism and unilateralism, being the largest free trade agreement that each Party has signed up to its ratification. The Economic Partnership Agreement between the EU and Japan includes a section on “Trade and Sustainable Development” (Chapter 16) in which the Parties recognise the importance of promoting the development of international trade in a way that contributes to sustainable development (paragraph 1 of Article 16.1). The EU and Japan recognise the contribution of the agreement in question to the promotion of sustainable development (first sentence of paragraph 2 of Article 16.1). Later in the agreement, the Parties emphasised the importance of multilateral environmental agreements (first sentence of paragraph 1 of Article 16.4). Each Party reaffirmed its commitment to the effective implementation of multilateral environmental agreements to which it is party and committed to exchange information with the other Party on its situation (paragraphs 2 and 3 of Article 16.4). In addition, the Parties recognised the importance and the role of trade in meeting the ultimate goal of the UNFCCC in responding to the serious threat of climate change, reaffirming their commitment to the effective implementation of the UNFCCC and the Paris Agreement (first and second sentences of paragraph 4 of Article 16.4). Most importantly, from the point of view of the subject of this study, the Parties committed to working together to promote the positive impact of trade on the transition to low greenhouse gas emissions and climate-resilient development, and to jointly tackle climate change towards achieving the ultimate objective of the UNFCCC and the purpose of the Paris Agreement (third and fourth sentences of paragraph 4 of Article 16.4). This part of the agreement also includes provisions on biodiversity (Article 16.6), sustainable forest management and trade in timber and timber products (Article 16.7), and trade and sustainable use of fisheries resources and sustainable aquaculture (Article 16.8).

The Economic Partnership Agreement between the EU and Japan is one of the most innovative and progressive agreements between the EU and a third country. It maintains the common high standards of the EU and Japan in the field of, inter alia, environment and sets ambitious global standards, being the first international trade agreement to explicitly support the implementation of the Paris Agreement. However, it should be remembered that the Economic Partnership Agreement is primarily a trade agreement and its effectiveness is measured in terms of trade volume, and, as the first full calendar year of its application has shown, it takes time to implement the provisions on trade and sustainable development, especially in the case of Japan.

The Partnership on Sustainable Connectivity and Quality Infrastructure, which was signed on 27 September 2019 by the

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28 Cf. Jacek Barcik, Aleksandra Wentkowska, Prawo Unii Europejskiej (Warsaw: C.H. Beck, 2014), 232.
29 Gabriel Felbermayr, Fukuunari Kimura, Toshihiro Okubo, Marina Steininger, “Quantifying the EU–Japan Economic Partnership Agreement,” Journal of the Japanese and International Economies 51 (2019): 110.
30 Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. Report on the Implementation of the Trade Policy Strategy Trade for All. Delivering a Progressive Trade Policy to Harness Globalisation, Brussels, 13.09.2017, COM (2017) 491 final, 8. Cf. Report from the Commission to the European Parliament, the Council, the European and Social Committee, the Committee of the Regions and the European Investment Bank. Fourth report on the State of the Energy Union, Brussels, 13.5.2019 final/2, 22–23
31 COM (2020) 705, 14–16.
32 Connectivity can be defined as bringing countries, societies and people closer together. It encompasses physical and institutional social-cultural linkages, sectorial agreements as well as regulatory and technical cooperation in concrete sectors such as transport, energy and digital (Communication from the Commission to the European Parliament and the Council. 2021 Strategic Foresight Report. The EU’s capacity and freedom act, Brussels, 8.9.2021, COM(2021) 750 final, 19).
President of the European Commission Jean-Claude Juncker and the Prime Minister of Japan Abe Shinzō, also confirms the commitment of both Parties to the full and effective implementation of the Paris Agreement (item 3). As clearly stated in the Connectivity Partnership, to the extent possible, cooperation is to take place through existing instruments, in particular the EU-Japan Strategic Partnership Agreement and the Economic Partnership Agreement. The Connectivity Partnership is not intended to create any legally binding rights or obligations for either Party under international or national law (item 10).

**Main elements of the EU-Japan Green Alliance**

In the general part of the document entitled ‘Towards a Green Alliance to protect our environment, stop climate change and achieve green growth’, both sides reaffirmed their decision to create climate-neutral, biodiversity-friendly and resource-efficient circular economies. As we read in the document, for both sides, climate neutrality is their chosen strategy for growth, employment, and competitiveness, in line with the European Green Deal and Japan’s Green Growth Strategy. Both sides reaffirmed their strong support for the rules-based international order and multilateralism, as well as their commitments under the Paris Agreement and commitment to the Convention on Biological Diversity (CBD) vision by 2050. The EU and Japan’s goal in the Green Alliance is furthermore to achieve an ambitious and realistic post-2020 global biodiversity framework to be adopted at COP15, as well as its effective implementation. Both sides also noted that the overwhelming majority of greenhouse gas emissions come from energy production and use and recognised the key role that safe and sustainable low-carbon energy technologies will play in achieving climate goals. The EU and Japan also agreed on the importance of non-discriminatory trade and investment in energy goods and services with low greenhouse gas emissions and announced the continuation of discussions on strengthening cooperation and their commercial relations.

The following parts of the document list the priority areas of cooperation, which include cooperation in the field of energy transition, environmental protection, regulatory and business cooperation, research and development, and sustainable finance. The third part of the EU-Japan Green Alliance deals with working together to transform developing countries towards a climate-neutral and resilient society. In addition to general phrases such as the intention to consider developing a joint support scheme, this section includes specific commitments from both partners. Thus, both sides reiterated their commitment to promote increased international public and private capital flows towards investments in line with the Paris Agreement and away from high-carbon power generation. They will gradually reduce new direct government support for carbon intensive international coal fuel energy in a manner that follows an ambitious, clearly defined pathway towards climate neutrality in order to keep global warming at the level of 1.5°C. Recognising that further global investment in unabated coal generation is incompatible with maintaining a 1.5°C level, the EU and Japan stressed that international investments in unabated coal must stop now. Regarding plastic litter in the sea, both sides have committed to taking urgent action to address this global challenge. They announced a collaboration to establish elements of a future global framework for plastics to reduce marine plastic litter, necessary for the further implementation of the Osaka Blue Ocean Vision and to take a decisive step at UNEA5.2. In the fourth part of the document, the parties focused on ensuring the global integrity and stability of climate action. In this regard, the EU and Japan have announced that they will strive to adopt and implement all necessary national policies and measures to achieve climate neutrality by 2050.

**The nature of the EU-Japan Green Alliance and its effects at the international level**

In the past, during the EU-Japan summits, international agreements between these partners were negotiated and signed. The twentieth anniversary of the EU-Japan strategic partnership will be written down in the history of relations between these entities in a different way, which does not mean that it is less important, primarily from the perspective of the EU. The agreement with Japan is part of a stream of activities of particular importance for the effectiveness of the European Green Deal. In this regard, the degree of mobilisation of its neighbours and partners to join the activities for sustainable development achieved by the EU should be considered as a measure of the plan’s effectiveness. This criterion was adopted by the EU itself, indicating that, as part of the necessary international cooperation, “the EU can use its influence, expertise and financial resources to mobilise its neighbours and partners to join it on a sustainable path.” The degree of mobilisation of neighbours and partners is an appropriate criterion. As it is indicated in the literature on the subject, the share of the EU in global greenhouse gas emissions is estimated at about 9%, which means that reducing emissions in the EU and the transition of its Member States to cleaner energy, although important and necessary, may only have a limited impact on the global trajectory. At least as important is the EU’s ability to work with other countries to enhance their

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33 Cf. Marie Söderberg, “EU-Japan Connectivity Promises,” RSC Policy Brief, issue 2021/22 (2021): 5.

34 15th session of the Conference of the Parties of the CBD in Kunming, 11–24.10.2021.

35 Cf. Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. State of the Energy Union 2021 – Contributing to the European Green Deal and the Union’s recovery (pursuant to Regulation (EU) 2018/1999 on the Governance of the Energy Union and Climate Action), Brussels, 26.10.2021, COM (2021) 950 final, 27.

36 The second part of the 5th session of the United Nations Environment Assembly in Nairobi, 28.02. – 2.03.2022 (the first part was an online meeting and took place on 22–23.02.2021).

37 Piotr Pięta, “Wsparcie UE–Japonia: powolna, ale stopniowa i stabilna droga do strategicznego partnerstwa,” in Państwo, organizacje międzynarodowe i partnerstwa strategiczne, ed. Lucyna Czechowska, Andryś Tyshak, Agata Domachowska, Karolina Gawron-Tabor, Joanna Piochowiak-Lamparska (Toruń: Wydawnictwo Naukowe Uniwersytetu Mikołaja Kopernika, 2019), 412.

38 COM (2019) 640, 3.
The above objection is not irrelevant in the context of formal consent by subjects of international law complicated law-making process and waives the requirement soft law can also be viewed as abuse, because it bypasses the necessary for quick decisions in dynamically changing circumstances. Soft law can also be treated as an element in the implementation of international environmental law norms because they are characterised by the flexibility of the adoption process necessary for quick decisions in dynamically changing circumstances. Soft law can also be treated as an element in the process of creating legally binding norms as well as an auxiliary element in their interpretation and application. However, soft law can also be viewed as abuse, because it bypasses the complicated law-making process and waives the requirement for formal consent by subjects of international law.

The above objection is not irrelevant in the context of the legal order of the EU, on the contrary - also informal agreements (non-binding acts) may be considered actions violating the division of competences between the EU and its Member States. Pursuant to Article 4(2)(e) of the Treaty of the Functioning of the European Union (TFEU), the environment is a shared competence between the EU and the Member States. Within those competences, EU policy on the environment shall contribute to achieving, inter alia, the objective of promoting measures at international level to deal with regional or worldwide environmental problems, in particular combating climate change (fourth indent of Article 191(1) TFEU). So, if the EU-Japan Green Alliance were an international agreement, it would have to be concluded not only by the EU but also by its Member States. However, while it is clearly not stated in the agreement, it does not create any binding obligations on either party under national or international law. Nevertheless, the representation of the EU side in the persons of the President of the European Council and the President of the European Commission should be considered problematic. In the case concerning the lack of competence of the European Commission to independently (without prior authorisation from the Council of the EU) sign a non-binding agreement with a third country on behalf of the EU, the European Court of Justice emphasised that the signature of a non-binding agreement requires the EU to assess whether the agreement reflects its interests, and the principle of distribution of powers and the principle of institutional balance must be respected by the EU institutions when making the assessment. In another judgment, the European Court of Justice did not accept the Commission’s thesis according to which the fact that an act such as the guidelines is not legally binding is sufficient for that institution to have the competence to adopt it. The determination of the conditions under which the adoption of such an act may take place requires, in the case of an act intended to reduce the risk of conflict related to the existence of technical barriers to trade in goods, to take due account of the division of powers and the institutional balance established by the Treaty in the field of the common commercial policy. There is no reason not to apply this principle to the field of the environment.

The document ‘Towards a Green Alliance’ mentions the “EU-Japan Summit – 27 May 2021” and consistently uses

39 Stephen Minas, “EU climate law sans frontiers: The extension of the 2030 Framework to the Energy Community contacting parties,” Review of European, Comparative and International Environmental Law 29, issue 2 (2020): 177.
40 Cf. Adriana Kalicka-Mikołajczyk, “Pojęcie umowy międzynarodowej w prawie Unii Europejskiej – uwagi do postanowienia Sądu z 28.02.2017 r., T-192/16, NF przeciwko Radzie Europejskiej,” Europejski Przegląd Sądowy, no. 12 (2019): 47.
41 Frédéric Simon, “EU, Japan seal ‘green alliance’ in bid for climate neutrality,” EURACTIV, 28.05.2021, https://www.euractiv.com/section/energy-environment/news/eu-japan-seal-green-alliance-in-bid-for-climate-neutrality.
42 Maria Magdalena Kenig-Witkowska, Międzynarodowe prawo środowiska. Wybrane zagadnienia systemowe (Warsaw: Wolters Kluwer Polska, 2011), 127–128.
43 Władysław Czapliński, Anna Wyrozumska, Prawo międzynarodowe publiczne. Zagadnienia systemowe (Warsaw: C.H. Beck, 2014), 15.
44 Czapliński, Wyrozumska, Prawo, 15.
45 Bartosz Soloch, “Wybrane problemy dotyczące podziału kompetencji pomiędzy Unią Europejską a jej państwa członkowskie w kontekście umów mieszanych,” Europejski Przegląd Sądowy, no. 3 (2020): 10.
46 Treaty on the Functioning of the European Union - consolidated version (Official Journal of the UE C 202, 7.06.2016, 47).
47 Cf. Róża Miklaszewska, “Prawo ochrony środowiska w Unii Europejskiej,” Przegląd Ustawodawstwa Gospodarczego, no. 5 (2014): 9; Alicja Sikora, “Konstytucjonalizacja ochrony środowiska w prawie Unii Europejskiej,” Europejski Przegląd Sądowy, no. 2 (2021): 6.
48 Cf. Anna Haladów, “Polityka ochrony środowiska – polityka sektorowa czy zintegrowana?,” Przegląd Prawa Publicznego, no. 9 (2016): 79.
49 Judgment of the Court of Justice of 28.07.2016, C-660/13, Council of the European Union v European Commission, EU:C:2016:616, 42 and 46.
50 Judgment of the Court of Justice of 23.03.2004, C-233/02, French Republic v Commission of the European Communities, EU:C:2004:173, 40.
the phrase ‘both sides’. The document did not mention the term ‘Member States’, and official summit reports clearly stated that a total of three persons had participated in the summit. It is not clear from the available information whether, when and in what form the document was signed. All the circumstances allow the conclusion that the conclusion of the agreement is an accomplished fact and that no further steps aimed at its approval are foreseen. In this context, the text could actually be treated as a communication from the Press Office of the European Council and we should consider whether we are dealing with an oral international agreement in the classic sense, i.e., of a binding nature. Even if this is not the case, and the EU-Japan Green Alliance contains only political obligations for its parties, from the point of view of their effectiveness, it is not advisable to continue the adopted procedural practice. The Member States of the EU should also be parties to such agreements so that the EU legal framework is not violated. Moreover, the nature of the arrangements should be clearly defined, as in the case of the Connectivity Partnership, otherwise this nature will be a controversial issue under international law.

Turning to the material issues, it should be noted that the ‘normative novelty’ of the EU-Japan Green Alliance cannot be overestimated. As assessed by Pieter de Pous, achieving net zero greenhouse gas emissions by 2050 means for Japan that it will have to reach zero-emission capacity by 2035 and become carbon-free by 2030. The EU is getting closer to this path and the Green Alliance gives hope that Japan will follow the EU’s footsteps. In turn, the Vice-President of the European Commission Frans Timmermans, responsible for the European Green Deal, said: “This is the EU’s first Green Alliance. It is a true milestone in our efforts to create a global coalition for net zero by the middle of the century.” Both assessments are justified in the content of the Alliance. This content is clear, concrete in the case of the vast majority of findings, precisely corresponding to the most current problems in the field of environmental protection and taking into account their global dimension as well as the postulated role of both partners in the present world, in particular with regard to developing countries. The agreement is ambitious and mobilising for both sides. It is a pity that it lacked a control mechanism for the implementation of findings, e.g., in the form of a review of actions taken. However, this does not diminish the importance of the initiated cooperation, as it is to be based on two existing and exceptional international agreements - the Strategic Partnership Agreement and the Economic Partnership Agreement. Both are modern and extremely ambitious.

**Conclusions**

The EU-Japan Green Alliance can hardly be called a standalone instrument of cooperation between these parties, as it is firmly embedded in their mutual international legal obligations. Due to the similar complexity of the EU’s relations with other third countries, it seems that this practice will be continued, the more so as it is difficult to separate the green issues from the issues concerning the economies of cooperating partners. Moreover, the formulation and implementation of ambitious goals require mutual trust. At the same time, it is impossible not to notice that the content of the document called the ‘Green Alliance’ is specific in comparison with other instruments of EU cooperation with third countries. It is fully geared to three goals: protecting the environment, halting climate change, and achieving green growth. The role of this document is manifold on the way to creating climate-neutral, biodiversity-friendly and resource-efficient circular economies and reaching net zero greenhouse gas emissions by 2050: shaping the awareness of states and individuals, planning, mobilising and reminding of responsibility for the world. So far, the EU has not concluded a second green alliance, so we can only observe the implementation of such an instrument from the example of Japan.

As shown by the analysis carried out, the green alliance, treated as an international instrument for the implementation of the European Green Deal, can be an effective means of achieving the goals of the EU and influence international relations in the direction desired by the EU. However, due to both its advantages and disadvantages, the first green alliance is hardly a model solution. On the one hand, this instrument requires a formal correction, on the other hand, it is deeply embedded in the unique international legal framework of EU-Japanese relations. Nevertheless, or perhaps because of that, the EU-Japan Green Alliance has a great potential to influence the relations of the EU with other third countries and the content of the legal norms that emerge as a result of these relations at various levels, as setting - in the words of Krzysztof Bolesa and Marcin Korolec - an example in order to mobilise other parties to the negotiations to take ambitious actions. In the future, in the case of such agreements, the jurisprudence of the European Court of Justice should be taken into account and appropriate participation of all relevant EU institutions and Member States in the admission procedure on the EU side should be ensured. The arrangements should have a clearly defined nature and be provided with a mechanism for monitoring their implementation, even if only in a soft form, e.g., in the form of periodic reviews. A material link with the binding instruments is also advisable, as in the case of Japan.

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51 Joint Statement - EU-Japan Summit, 27.05.2021, https://www.consilium.europa.eu/en/press/press-releases/2021/05/27/joint-statement-eu-japan-summit-27-may-2021.
52 Czapliński, Wyrozumski, Prawo, 57; Jacek Barcik, Tomasz Srogosz, Prawo międzynarodowe publiczne, (Warsaw: C.H. Beck, 2019), 116–117.
53 Cf. Czapliński, Wyrozumski, Prawo, 60.
54 Simon, “EU, Japan seal ‘green alliance’”.
55 Krzysztof Bolesa, Marcin Korolec, „Polityka klimatyczna jako niezależny element polityki zagranicznej Unii Europejskiej – wnioski dla Polski,” Sprawy Międzynarodowe 73, no. 1 (2020): 53. Cf. Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. Speeding up European climate action towards a green, fair and prosperous future. EU Climate Action Progress Report 2021, Brussels, 26.10.21, COM(2021) 960 final, 25.
Finally, it should be remembered that the EU and Japan are like-minded partners and the stereotypical thinking about Europe imposing green standards on Asia is not legitimate in this case. Japan has a strong culture of avoiding waste and saving resources\textsuperscript{56}. At the turn of the millennium, in the context of the speed of resource consumption, the EU has responded to this excessive resource throughput by considering the potential for decoupling economic and environmental activity, whereas the Japanese government has promoted the concept of circular economy. Decoupling economic and environmental activity was defined as using fewer resources per unit of economic production and reducing the environmental impact of any resources used or economic activities undertaken. Circular economy contrasts with a traditional, linear model of the economy, in which unrestrained access to raw materials and waste disposal facilities is assumed. Japan passed a Fundamental Law for Establishing a Sound Material Cycle Society in 2000 and introduced its first Fundamental Plan three years later\textsuperscript{57}. Therefore, it is difficult to speak of imposing EU standards of conduct onto Japan. From the beginning of the recent changes in the consciousness of states and individuals, we have rather dealt with complementary visions of the economy and the natural environment.

\textbf{Data availability}

No data are associated with this article.

\textsuperscript{56} Marquita K. Hill, \textit{Understanding Environmental Pollution} (Cambridge: Cambridge University Press, 2010), 533.

\textsuperscript{57} Tim Cooper, “Sustainability, Consumption and the Throwaway Culture,” in \textit{The Handbook of Design for Sustainability}, ed. Stuart Walker, Jacques Giard (London – New York: Bloomsbury Academic, 2013), 139–140.