



**COUNCIL OF
THE EUROPEAN UNION**

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NOTE

from:	General Secretariat
to:	Delegations
No prev. doc.:	13259/11 COPEN 187 EJN 93 EUROJUST 114 COASI 127
Subject:	EU-Japan Mutual Legal Assistance Agreement - Fact-sheet on the practical conduct of MLA procedures

Delegations will find enclosed a factsheet prepared by the Japanese authorities to facilitate cooperation on mutual legal assistance with Japan, pursuant to the Agreement between Japan and the EU.

**Execution of a request, under the EU-Japan Mutual Legal
Assistance Agreement, in *Japan***

Practical information

PRELIMINARY REMARKS

1. This information sheet relates only to the execution by Japan of mutual legal assistance requests under the EU-Japan Mutual Legal Assistance Agreement.
2. For any information about mutual legal assistance requests issued by the competent authorities of Japan, it is possible to contact *International Affairs Division, Criminal Affairs Bureau, Ministry of Justice* or *International Investigative Operations Division, National Police Agency*. (Please note that there are two central authorities to send request from Japan. The Ministry of Justice will be the sole central authority for receiving requests sent to Japan.)
3. This fact-sheet may be subject to amendment and can be updated at any time.

PRACTICAL DETAILS

1. Central authority or authorities designated in accordance with Article 4 of the EU-Japan MLA agreement, in view of the execution of a MLA request in Japan (see also Annex I of the agreement):

(If different authorities have been designated please specify for which purpose each of them may be contacted)

- Official name(s):

International Affairs Division, Criminal Affairs Bureau, Ministry of Justice

Current Director: (Mr.) Taiji Oyama

- Contact details of the central authority / authorities:

Address: **Kasumigaseki 1-1-1, Chiyoda-ku, Tokyo, 100-8977, Japan**

Telefon (country code) (area/city code): **+81-(0)3-3592-7049**

Telefax (country code) (area/city code): **+81-3-3592-7063**

E-mail (if any): infojp@moj.go.jp

Japan may also send the request from National Police Agency but all requests to Japan shall be addressed to the Ministry of Justice as mentioned above.

Languages that may be used for communication:

Japanese/ may be able to respond by English

- Due to time zone difference and different levels of English competency among our staffs, preferable mean of contact is by writing (e-mail/ fax).

2. Languages in which MLA requests should be forwarded to the competent authority of Japan, according to Article 9 of the EU-Japan MLA agreement (see also Annex III of the agreement):

Requests for assistance and the relevant documents should be sent accompanied by translation:

- **in all cases: into Japanese;**
- **in urgent cases: into English.**

Japan has reserved the right, in any specific urgent case, to require translation into Japanese with regard to the request from the requesting State which does not accept translation into English under the Annex of the agreement.

3. Procedures for forwarding request for assistance to the competent authority of Japan

Please indicate what specific procedures, if any, will be requested by the competent authorities of your State for forwarding MLA request.

These are not “required” by law but;

- **For authorities of the Federal Republic of Germany, the French Republic and the UK; we strongly recommend respective authorities to communicate with the first secretary (legal attaché) of our embassy in respective capitol before sending us the request letter. Please note that even if your authority has skipped informing them, our office will contact them to facilitate the communication with the requesting authority.**
- **With regards to those investigation involving multiple jurisdictions within EU and Japan; we strongly recommend to have the legal attaché of our Perm Rep to the EU in Brussels to be involved. At least, well coordination among EU countries on the request to Japan is greatly appreciated.**
- **If there is no advance communication with our legal attachés, we strongly encourage the EU Member States which has interest of sending Japan an MLA request to contact our division at drafting stage.**
- **Please inform us contact info (preferably e-mail) of the person with whom we could inquire about the request/ follow-up on our situation with the request (and possible to communicate via English).**

Please indicate whether your authorities will need any confirmation in written when, in urgent cases, the request has been sent by any other means, including fax or e-mail, pursuant to Paragraph 2 of Article 8 of the EU-Japan MLA agreement.

- **For any case, an advance notice by an e-mail or fax is greatly appreciated but the actual letter should be followed.**

4. Certification

Please indicate whether in order to ensure admissibility of records or documents your State will require any specific requirement under the certification procedure Article 10, paragraph 6 of the EU-Japan MLA agreement. Please specify.

No.

If requesting Japan for documents/records, we appreciate advance clarification if the original is necessary. Otherwise, we would send the certified copy.

5. List of possible actions sought

Regarding to Paragraph k) of Article 3 of the EU-Japan MLA agreement, please indicate, if any forms of assistance other than those listed under Paragraphs a)-j) of Article 3 of the EU-Japan MLA agreement is permitted under your national law.

No

6. Double criminality requirement, if applicable

Please indicate whether your State intends to make use of the first part of Paragraph 2 of Article 11 of the EU-Japan MLA agreement.

Yes

7. Confidentiality or limitation of use of evidence obtained

Please indicate whether your State intends to make use of Paragraph 2 of Article 13 of the EU-Japan MLA agreement in accordance with your national law, either on a case-by-case basis, or in general.

If so, please indicate, as far as possible, under which conditions the use of the information collected may be authorised.

Japan reserves the right to make use of Para. 2 of Art.13 on case by case basis.

Japan trust that in general, the evidence obtained to be treated as confidential and be limited to the use in the criminal proceedings as prescribed in the request letter. Japan may request further consideration depending on the case and the nature of the evidence (for witness protection etc.).

8. Any extra information on specific type of request(s):

Hearing by video-conference:

Please indicate whether any particular requirements, either legal or technical, other than those listed in Paragraph 2 of Article 16, are necessary under the domestic legislation of your State in order to execute a request for hearing by video-conference (e.g time limit for the reception of such a request).

- **Advance consultation with International Affairs Division, Criminal Affairs Bureau, Ministry of Justice is required. Other details are to be discussed but in general;**
 - **Appearance to the hearing to be voluntary (Japan will not subpoena the witness to appear for the hearing nor will permit the sanction to be applied by requesting country for non- appearance.)**

- **Making the oath to be voluntary (Japan will not compel the witness to take an oath nor will permit the sanction to be applied by requesting country for refusing the oath.)**
- **Japan will not;**
 - ✧ **apply the offence of perjury, nor**
 - ✧ **compel the statement (will not sanction for refusing to testify)**
- **To apply those reasons permitted under Japanese law to refuse testimony (ex. Right to refuse incriminatory testimony or professional privileges. Cf. Japanese procedure does not have transactional/use immunity thus offering such immunity will not deprive the person's right to refuse testimony under Japanese law)**
- **Requesting country to thoroughly explain the witness if intending to apply the offence of perjury or sanction for refusing to testify,;**
 - ✧ **Possibility of sanctions,**
 - ✧ **What constitute the offence of perjury and/or**
 - ✧ **When the witness may sanctioned for refusing to testify**
- **Representative(s) from Japanese authority to be present during the hearing to make sure above mentioned explanation of the law of requesting country has been properly given to the witness and to intervene when the questioning/procedure infringe Japanese law.**

Please indicate any practical suggestions that may help to execute such a request.

Taking testimony or statements

Please indicate the requirements under your domestic legislation for testimony or statements gathered under Article 15 of the EU-Japan MLA agreement to be considered admissible evidence, e.g. do you require the statement to be taken under oath or under a penalty of criminal punishment for false statement, to be admissible evidence.

- **When Japan requests statements to be gathered: Japan does not require statements to be taken under oath to be admissible evidence. Statement taken by law enforcement officer will be enough, if the witness has reviewed the taken statement, confirmed its content and signed the content to be true to his/her knowledge.**

- **When requesting Japan to gather statements:**
 - **Questionnaire is essential.**
 - **Unless specified in the request letter, the witness statement will be taken by a prosecutor or a police officer (thus the witness will not be making an oath). Under Japanese law, testimony under an oath will only be administered by a judge/ court.**
 - **If to request a judge to hear the witness, practically, judge will ask for sufficient information to be provided as to why such testimony are sought, thus the request letter need to include such information and relevant law.**

- **In the case of suspect;**
 - **Under Japanese law, a suspect will be protected with the right to remain silent even if he/she agreed to offer a statement before the court. Thus there are no procedure of obligating the suspect to testify/ make a statement, taking an oath for the suspect nor charging the suspect for perjury on his/her conducts.**

Obtaining items

Regarding "the information justifying such (coercive) measures under the laws of the requested State" stated under Article 17 of the EU-Japan MLA agreement, please elaborate on such information, including any limitation with respect to the authority which the cooperation request originated.

- **Will require double criminality**
- **The Japanese central authority does not have the authority to issue the warrant nor to request the judge for a warrant. The executing agency will be requesting a judge for the issuance of warrant. The request needs to elaborate on justifications and necessity of obtaining the evidence by coercive measures. The warrant of the requesting country will not suffice. Japan will reserve the right to request for the further evidences for the warrant.**

- **All supporting evidences for the execution of the request need to be translated.**
- **There are professional privileges given under Japanese law to refuse the seizure.**
- **If the requested item is documents, unless otherwise specified, Japan will send a certified copy.**
- **If the original material is presented, the material needs to be returned upon the completion of the criminal proceedings. Requesting country needs to consult with Japanese central authority before utilizing the material in other proceedings.**

Bank Accounts

Please indicate whether any particular requirements exist under your domestic legislation in order to obtain records, documents or reports of bank accounts under Article 18 of the EU-Japan MLA agreement, as well as any practical suggestion that may help to execute such a request.

- **Japan does not require a warrant or subpoena to obtain bank records.**
- **Other than the basic information to make a request, there are no particular requirements.**
- **Practically, name of the bank, name of the account holder and account number will be necessary.**

Also indicate any applicable conditions as referred in Art.18(4) which may limit the execution of the request to obtain the bank record.

None

9. Other particularly relevant information (such as national legislation, national guides on procedure, links to national websites...):
