



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 3 September 2012

13298/12

**COPEN 188
EJN 58
EUROJUST 75
COASI 145**

NOTE

from:	Belgian delegation
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 find in Annex practical information on the execution of a request, under the EU-Japan Mutual Legal Assistance Agreement, in Belgium.

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

Practical information

PRELIMINARY REMARKS

1. This information sheet relates only to the execution by Belgium 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 Belgium, it is possible to contact the Belgian Federal Public Service Justice (*see contact details below*).
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 Belgium (see also Annex I of the agreement):

- Official name(s):

FEDERAL PUBLIC SERVICE JUSTICE

Central Authority for International Co-operation in Criminal Matters

SERVICE PUBLIC FEDERAL JUSTICE

Autorité centrale de coopération internationale en matière pénale

FEDERALE OVERHEIDSDIENST JUSTITIE

Centrale Autoriteit Internationale Samenwerking in Strafzaken

- Contact details of the central authority / authorities:

Address: Boulevard de Waterloo 115, 1000 Brussels, BELGIUM

Telefon (country code) (area/city code): +32 2 210 56 85 / 87 / 89 / 91 / 94

Telefax (country code) (area/city code): +32 2 210 57 98

E-mail (if any): MLA@just.fgov.be

Languages that may be used for communication: French / English / Dutch

2. Languages in which MLA requests should be forwarded to the competent authority of Belgium, 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 Dutch, French or German;
- in urgent cases: into English.

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

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

Incoming MLA-request from non-EU-member States require the preliminary authorization by the Minister of Justice. The Central Authority provides authorization for the execution of such incoming MLA-requests to the judicial authority that is competent to execute the request. The conventional and legal requirements will be verified before the MLA-request is being forwarded to the competent judicial authority.

The competent judicial authority is the prosecutor's office of the district where the request should be executed. In case a request requires execution in two or more of the 27 judicial districts or if the location(s) of the execution are not (yet) specified, the Federal Prosecutor's office will receive the request and will assure the coordination between the local prosecutor's offices that are designated to execute the request.

The federal prosecutor's office is exclusively competent to execute MLA-requests regarding crimes against humanity, genocide and war crimes and has a predominant competence for the execution of MLA-requests in the field of terrorism and serious organized crime, the latter especially when multiple judicial districts are involved.

MLA-requests requiring the execution of house searches and seizures require a secondary set of judicial authorizations. Before the execution of such a request, the prosecutor will need to obtain a court's authorization. After the execution of the requested searches and seizures, the same court will authorize the transmission of the seized evidence. The reason for this supplemental double judicial authorization is to avoid any interference with an ongoing Belgian investigation.

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.

The Belgian central authority accepts urgent MLA-request in any written form including via fax or e-mail. Such a forwarded request will be used to prepare the execution.

However, in order to assure proper execution and the transmission of the evidence, the original version of the request is required. An advanced copy should thus always be followed by the original request.

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.

It is sufficient that requests are presented in their original form. No further certification is required.

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.

Belgium accepts MLA-requests that seek any kind of judicial assistance in criminal matters. Article 3 a)-j) do not contain a form of assistance that cannot be provided by the Belgian (judicial) authorities.

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. Since the application of coercive measures requires an investigating judge's warrant, the warrant will only be issued if domestic legal requirements are met. Since, e.g. a search or wire tap warrant can only be issued for offences in accordance with the Belgian criminal law, double criminality is a basic condition for mutual legal assistance requests under the first part of article 11, paragraph 2.

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.

Article 13, paragraph 2 will be applied on a case-by-case basis. The evidence provided after the execution of an MLA-request can only be used for the purpose for which it was requested, i.e. a judicial pre-trial investigation or a criminal trial.

Insofar (part of) the evidence requires further limitations for data protection purposes, specific conditions to its use may be applied.

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).

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

Belgium can accommodate videoconference hearings both legally and practically. There are no particular time limits for requesting a hearing by videoconference. Requests should allow a brief period of time in order to exchange the technical data needed for the video link-up.

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.

In accordance with Belgian Criminal Procedure law, a suspect or defendant cannot provide statements under oath. A person that is or could be considered as a suspect could only provide statements under oath for the benefit of the requesting party and insofar the questioned person is in no way involved in a domestic Belgian matter.

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 from which the cooperation request originated.

Coercive measures require the authorization (warrant) from an investigating judge. In that respect, double criminality is a basic requirement (see above, 6).

Upon receipt of the MLA-request, the ministry's authorization to execute and the transmission to the proper prosecutor's office, the latter will request an investigating judge to execute the request as far as the required coercive measures are concerned.

The investigating judge will operate within the realms of the prosecutor's request to do so, i.e. normally the boundaries of the MLA-request, in case that request does not regards facts / offences that are also the subject of a domestic pre-trial investigation or trial.

The requested coercive measures can be executed if the requirements under article 8, paragraph 3 are fulfilled.

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.

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

Bank records as well as records of telecommunication companies are obtained via a prosecutor's production order. Article 46bis of the Belgian Criminal Procedure Code excludes the intervention of an investigating judge. Obtaining bank records or telecommunication records is thus not considered to be coercive measure in accordance with Belgian criminal procedure law.

Insofar the MLA-request meets all formal and content-related requirements, especially those contained in article 8, paragraph 3, there should be no problem to issue a prosecutor's order to obtain bank records or similar records included in article 46bis of the Belgian Criminal Procedure Code.

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

General information on Belgian criminal (procedure) law can be found on the Federal Public Service Justice: www.just.fgov.be.
