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NOTE

From:	The Italian delegation
To:	Delegations
No. prev. doc.:	13259/11
Subject:	EU-Japan Mutual Legal Assistance Agreement - Fact-sheet on the practical conduct of MLA procedures

Delegations will find attached information provided by the Italian delegation on the practical conduct of mutual legal assistance procedures under the EU-Japan Mutual Legal Assistance Agreement¹ in Italy.

¹ OJ, L 39, 12.2.2010, p. 20

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

Practical information

PRELIMINARY REMARKS

1. This information sheet relates only to the execution by ITALY 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 ITALY, it is possible to contact the MINISTRY of JUSTICE (*see the below-mentioned contact details*).
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 ITALY (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): **MINISTERO DELLA GIUSTIZIA-DIREZIONE GENERALE DELLA GIUSTIZIA PENALE- UFFICIO II- COOPERAZIONE INTERNAZIONALE**

- Contact details of the central authority / authorities:

Address: VIA ARENULA n. 70, 00186 ROMA

Telephone (country code) (area/city code): ++39 06-68852180

Telefax (country code) (area/city code): ++39 06-68897528

E-mail (if any): Ufficio2.dgpenale.dag@giustizia.it

Languages that may be used for communication: Italian/English

2. Languages in which MLA requests should be forwarded to the competent authority of ITALY, 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 a translation:

- in all cases: into (*accepted language or languages to be inserted*); ITALIAN
- in urgent cases: into (*accepted language or languages to be inserted*). ENGLISH

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

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

There are no specific procedures for forwarding MLA requests.

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

If a confirmation in writing is needed that the request has been received, this will be specified in the mutual legal assistance request on each occasion; however it would be useful to provide that kind of information in any case.

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.

Depending on the type of requested documents it may be possible to send a certified copy thereof only. If it is impossible to send the original document the relevant grounds for this shall be specified on a case-by-case basis.

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.

Although the following is not an exhaustive list, further actions that may be carried out under letter k) of Article 3 are: expert reports, cross-examination, telephone interception, obtaining telephone and telecommunications data (and this is also covered by the Budapest Convention on Cybercrime that has also been ratified by Japan).

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.

It is Italy's intention to opt for refusal in compliance with Article 11 § 2 and request dual criminality when coercive measures are sought.

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.

It is Italy's intention to resort to Article 13 § 2.

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

In relation to any single mutual legal assistance request, the judicial authority in charge of the procedure shall indicate if confidentiality is required or it shall specify under which conditions the transmitted data may be used.

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).

In the domestic legal system a defence lawyer is required to be present if a suspect is involved; this safeguard shall be fulfilled both for outgoing and incoming requests. There are no time limits for filing a request for hearing by video conference connection; however such a request shall be received by the Central Authority within a reasonable time for it to complete the internal procedures including the transmission of the request by the Minister to the competent Court of Appeal, the adoption of the *exequatur* decision and the necessary technical arrangements. Therefore, apart from matters of absolute urgency, the request shall preferably be transmitted at least 90 days before the day set for the hearing.

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.

If a witness shall be examined, he/ she shall be advised of his/her obligation to tell the truth when answering the questions, unless the facts at issue may give rise to his/her possible criminal liability.

Furthermore a witness should be informed that he/she may refrain from providing answers when he/she is a close relative for the defendant (ascendant, descendant, spouse, brother, sister, in-laws in the same degree, uncle/aunt or nephew/niece or grandchild) or a person linked to the defendant by adoption ties or he/she is or has been a live-in partner for the defendant without being his/her spouse, or he/she is his/her separated spouse or a person towards whom a judgment has been delivered to annul, dissolve or discontinue the civil effects of a marriage with the defendant (in the latter cases only for facts that occurred or were learnt during their cohabitation as spouses).

In case of a suspect/defendant, he/she shall be advised before his/her examination that he/she may decide not to answer questions and that, if he/she decides not to avail himself/herself of this opportunity, his/her statements may always be used towards him/her while he/she may be heard as a witness under specific conditions (laid down in Article 197 *bis* of the Code of Criminal Procedure) if those statements concern third persons.

Due to the complex safeguards to be fulfilled depending on the procedural status of the person to be examined, the requesting judicial authority shall specify on each occasion what kind of warnings and notices shall be made, provided they are compatible with the Japanese system, for the statements to be used domestically.

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.

In cases of requests for search and seizure, apart from the indications concerning the offence at the basis of the proceedings, which are necessary to check on dual criminality, the following information is also required:

- in case of seizure for evidentiary purposes the request shall include detailed information allowing for the item to be connected to the offence;
- in case of restraint the reasons shall be specified why the assets are likely to worsen or extend the consequences of the offence or facilitate the commission of further offences; if seizure is aimed at confiscation, an indication is needed of the final dispossession measure requested and its pre-requisites and it should also be specified whether it is confiscation of property of corresponding value.

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.

There no particular conditions or limitations for banking enquiries other than those set forth for the execution of a mutual legal assistance request under this Treaty.

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

Useful information on domestic legislation governing MLA matters may be found on the website of the European Judicial Network or on the website of the Ministry of Justice (www.giustizia.it)
