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NOTE

From: The Japanese mission to the European Union
To: Delegations

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Subject: EU-Japan Mutual Legal Assistance Agreement
- Fact-sheet on the practical conduct of MLA procedures

Delegations will find attached information provided by the Japanese mission to the European Union on the practical conduct of mutual legal assistance procedures under the EU-Japan Mutual Legal Assistance Agreement¹ in Japan.

¹ OJ, L 39, 12.2.2010, p. 20

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 on mutual legal assistance requests issued by the competent authorities of Japan, contact *International Affairs Division, Criminal Affairs Bureau, Ministry of Justice* (for requests from any competent authorities other than police) or *International Investigative Operations Division, National Police Agency* (for requests from police). (Please note that there are two central authorities that may send requests 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.) Yoshimitsu Yamauchi

- Contact details of the central authority / authorities:

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

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

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

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

Japan may also send the request from the 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 in English

- Due to time zone differences and different levels of English competency among our staff, the preferable means 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 a 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 a 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 the respective authorities to communicate with the first secretary (legal attaché) of our embassy in the respective capitals, who works as a liaison with regard to MLA, before sending us the formal request. Please note that even if your authority has skipped informing them, our office will contact them in order to facilitate the communication with the requesting authority.
- **For other Member States or with regard to those investigations involving multiple jurisdictions within EU;** we strongly recommend to have the legal attaché of our Perm Rep to the EU in Brussels be involved. He/She is a Japanese Contact Point of EJM and EUROJUST. In the least, good 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 have an interest in sending Japan an MLA request to contact our division at drafting stage.
- **Please inform us of the contact information (preferably e-mail) of the person** with whom we could inquire about the request/ follow-up on our situation with the request (and if possible to communicate via English).

Please indicate whether your authorities will need any confirmation in writing 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.

- **Formal written request has to be followed when you use other means of communication.**

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 documents/records from Japan, 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 a case by case basis.

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 the Japanese central authority needs to ensure the following conditions are fulfilled:**
 - **Witness/expert witness will appear to the hearing/ take an oath on a voluntary basis. The Japanese competent authority would not take any coercive measures (e.g. subpoena) and the requesting country would not impose any sanction against him/her over refusal to appear/ swear**
 - **Japan will not;**
 - ✧ **apply the offence of perjury under Japanese law, nor**
 - ✧ **compel the statement (will not sanction for refusing to testify)**
 - **All the grounds to refuse testimony under Japanese law shall be available to the witness (ex. Right to refuse incriminatory testimony or professional privileges.)**
 - **Requesting country shall thoroughly explain to the witness the following points if intending to apply the offence of perjury or sanction for refusing to testify,;**
 - ✧ **Possibility of sanctions and their contents;**
 - ✧ **What constitutes the offence of perjury; and/or**
 - ✧ **When the witness may be sanctioned for refusing to testify**
 - **Representative(s) from Japanese authority will be present during the hearing to make sure the above-mentioned explanation of the law of the requesting country is properly given to the witness and to intervene when the questioning/procedure infringes 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 in order for them to be admissible evidence. Statements taken by law enforcement officers will be enough, if the witness reviews the taken statement, confirms its contents and signs it showing that the contents are true to his/her knowledge.**

- **When requesting Japan to gather statements:**
 - **List of questions for the witness 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 take an oath). Under Japanese law, testimony under an oath will only be administered by a judge/ court.**
 - **If there is a request for a judge to hear the witness, practically, the judge will ask for sufficient information to be provided as to why such testimony is sought, thus the request letter needs to include such information and the relevant laws.**

- **In the case of a suspect;**
 - **Under Japanese law, a suspect will be guaranteed the right to remain silent, and he/she is never required to make a statement under oath. Thus it is impossible for us to take a suspect's statement under oath or to charge him/her for making a false statement in the MLA procedure.**

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.

- **Generally speaking, double criminality is necessary.**
- **The Japanese central authority does not have the authority to issue a warrant nor to request the judge for a warrant. The executing agency will request a judge for a warrant. The request needs to elaborate on justifications and necessity of obtaining the evidence by coercive measures based on the proper supporting evidence/information. The warrant of the requesting country will not suffice. Japan will reserve the right to request for further evidence for the warrant.**
- **All supporting evidence for the execution of the request needs to be translated.**
- **There are certain professional privileges given under Japanese law to refuse 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. The requesting country needs to consult with the Japanese central authority before using 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 asks banks to voluntarily provide its records.**
- **Name of the bank including the branch name, name of the account holder and account number will be necessary.**
- **Relevance of the bank account to the case and the necessity of the record/documents in the investigation needs to be explained in the 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.

None

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