



**Brussels, 14 March 2016
(OR. en)**

6935/16

**COPEN 71
EJN 16
EUROJUST 26
COASI 24**

NOTE

From: Slovak delegation
To: Delegations

Subject: EU-Japan Mutual Legal Assistance Agreement
- Questionnaire in view of the "Japan Day" on 14 July 2016

Under its Presidency, the Slovak delegation intends organising a "Japan Day" on Thursday 14 July 2016, in order to discuss the practical application of the EU-Japan 2009 MLA Agreement, which entered into force in January 2011.

It is foreseen that during this day, there will be a discussion in the COPEN Working Party on the application of the MLA Agreement, followed by presentations and discussions with Japanese experts at the EU mission of Japan in Brussels.

In order to prepare the Japan Day, Member States are kindly requested to provide answers to the attached questionnaire, and send these before cob on **Monday 16 May 2016** to the Council General Secretariat (steven.cras@consilium.europa.eu).

QUESTIONNAIRE ON THE APPLICATION OF THE 2009 MLA AGREEMENT
BETWEEN THE EUROPEAN UNION AND JAPAN (OJ L 39, 12.2.2010, p. 20)

Please reply to all questions. If the question is not applicable, please indicate so by putting ‘NA’.

1. Experience of Member States as *requesting* States

Please answer each of the following questions:

- a. How many MLA requests have the competent authorities of your Member State sent to Japan following the entry into force of the EU-Japan MLA agreement in January 2011?
- b. Were the requests from your Member State sent directly to the Ministry of Justice in Japan or through diplomatic channels?
- c. What type of assistance did your requests concern? Please specify also, if possible, the offences concerned.
- d. How long did it take to comply with your request or to receive an answer to your request?
- e. In which language was the request formulated? Did the competent authorities of your Member State experience any language problems in the course of the procedure?
- f. Have the competent authorities of your Member State requested hearing by videoconference? Have the requests been executed? Please describe the experience including, where appropriate, details of the case, the laws applied for the hearing, problems due to time difference or language and any other issues you consider informative.
- g. Have the competent authorities of your Member State requested records, documents or reports of bank accounts? If yes, was the request executed? If it was not executed, what was the reason?
- h. Have the competent authorities of Japan refused your requests for any reason? If yes, please indicate the ground for refusal
- i. Did the competent authorities of your Member State experience any difficulty in cooperating with the Japanese Central authority or any other Japanese authority? If so, please describe.

2. Experience of Member States as *requested States*

Please answer each of the following questions:

- a. How many requests have the competent authorities of your Member State received from Japan following the entry into force of the EU-Japan MLA agreement in January 2011?
- b. What type of assistance did these requests concern? Please specify also, if possible, the offences concerned.
- c. How long did it take you to execute these requests or to send an answer to the Japanese authorities?
- d. In which language did you communicate with the Japanese authorities about the request? Did your competent authorities experience any language problems in the course of the procedure?
- e. Have the Japanese authorities requested hearing by videoconference? Has the request been executed and what was your experience? Please describe the experience including, where appropriate, details of the case, the laws applied for the hearing, problems due to time difference or language and any other issues you consider informative.
- f. Have the Japanese authorities requested records, documents or reports of bank accounts? If yes, did you execute the request? If you did not execute the request, what was the reason?
- g. Have the competent authorities of your Member State received any request concerning an offence punishable by death under the laws of Japan? If yes, did you execute the request? Under what conditions did you execute the request?
- h. Have the competent authorities of your Member State refused any Japanese requests for any reason? If yes, please indicate the ground for refusal.
- i. Did the competent authorities of your Member State experience any difficulty concerning the formalities required by Japan? If so, please describe.

3. Non-application of Agreement

If your authorities have not yet applied the EU-Japan MLA Agreement, please indicate the reason(s) thereof:

- a) No case concerning Japan occurred
- b) Other reason - please describe.

4. Further scope for improving the application of the EU–Japan MLA Agreement

Apart from the information you have provided by answering the above questions, do you see any scope for further improvement of the application of the EU–Japan MLA agreement? If so, which improvement(s) should in your opinion be made, and how do you think these improvements could be realized in practice?

5. Witness interview/examination - Question by the Japanese authorities

In Japan, in order to execute MLA requests asking for obtaining information from a witness, there are two possibilities:

- witness interview by a police officer/prosecutor;
- witness examination at a court by a judge/court.

The result of the interview is called "statement", and the result of the examination is called "testimony", and both of them are admissible as evidence. In Japan there is no affidavit. The features of interview and examination are as set out in the attached table.

The Japanese authorities sometimes receive requests, which miss the description of the manner in which information from a witness is to be obtained.

- a) Please indicate if a statement taken through an *interview* by a police officer or prosecutor in Japan as an execution of MLA requests is admissible as evidence in your criminal procedure. If it is not admissible, please provide the reason therefore, and any related provision if applicable.
- b) Please also indicate if a testimony taken through a witness *examination* at a court by a judge/court as an execution of MLA requests is admissible as evidence in your criminal procedure. If it is not admissible, please provide the reason therefore, and any related provision if applicable.

6. Presentations at the Japan Day

At the "Japan Day", which is scheduled to take place on Thursday 14 July 2016, it is proposed that Japanese legal experts will give short presentations on a range of criminal law issues related to the execution of MLA requests, including the following:

- Pre-MLA enquiries – who to approach for background/preliminary information;
- Best practice in drafting MLA requests to be transmitted to Japan;
- Witness interview procedure and witness rights;
- Suspect interview procedure and suspect rights;
- Banking records;
- Special investigative techniques in the fight against organized crime.

Are there any other areas of Japanese criminal law which you would find useful to learn about?

TABLE

accompanying Question 5

**Features of "interview" and "examination" of witnesses
in Japanese criminal proceedings**

	Interview by a police officer / prosecutor	Witness examination by a judge/court
Procedure	Invite the witness to the venue and conduct the interview	Submit documents to a judge/court, that decides to hold the witness examination and conducts the examination
Venue	Police station, prosecutor's office, etc.	Court
Oath	Witness does not take an oath	Witness takes an oath
Notification of witness' rights	N/A	Judge/court informs the witness on the punishment of perjury, and of the right to refuse to testify if it could result in criminal prosecution or in a conviction against the witness or against his or her immediate family-members
Presence of counsel during the execution of request	Discretion of the interviewer (rarely exercised)	Discretion of the judge/court
Estimated time of execution of request	Considerably quicker than a witness examination	In general, takes more time than conducting an interview