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Delegations will find attached the declassified version of the above document.

The text of this document is identical to the previous version.

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# RESTREINT UE



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 12 June 2008**

**10592/08**

**RESTREINT UE**

**COPEN 121  
COASI 121**

## **NOTE**

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From :	General Secretariat of the Council
To	Delegations
Prev doc	7450/07 RESTREINT UE COPEN 36 COASI 39
Subject :	Information concerning informal, exploratory consultations on a possible agreement between the European Union and Japan on mutual legal assistance

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On 17 March 2007 the German Presidency submitted a number of questions to delegations. The aim of these questions was to allow the German Presidency to prepare the second informal meeting with Japan, which took place at the end of the German Presidency on 21 and 22 June 2007 (Tokyo)<sup>1</sup>. In the meantime, a third EU-Japan informal meeting was held in Brussels on 20 and 21 May 2008 with a view to further exploring and discussing the possibility of concluding a Mutual Legal Assistance Agreement (MLAT) between Japan and the European Union<sup>2</sup>.

Whilst the purpose of the questionnaire was to inform the Presidency in view of the exploratory talks with Japan, the Council Secretariat has also received requests from delegations that the answers be distributed among Member States. The present document seeks to satisfy those requests.

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<sup>1</sup> 11941/07 COPEN 112 COASI 97 RESTREINT UE.  
<sup>2</sup> 10039/08 COPEN 106 COASI 104 RESTREINT UE.

# RESTREINT UE

ANNEX

<b>Answers of the Member States to the questionnaire (7450/07 COPEN 36 COASI 39)</b>					
	<i>Would delegations welcome the continuation of negotiations?</i>	<i>Do delegations agree that all of the subject matters dealt with in the 2000 EU MLA Convention could potentially be dealt with an MLA Agreement with Japan?</i>	<i>Would it be expedient and/or possible to have provisions on seizing and confiscating assets?</i>	<i>Could same conditions and grounds for refusal apply as in the 1959 CoE MLA Convention?</i>	<i>Any other matters that should be addressed in the context of further explanatory talks?</i>

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<b>BE</b>	-	<p>-The discussion with Japan should be as open as possible and thus deal with all types of mutual legal assistance in criminal matters. The content of the EU 2000 convention and the 2001 Protocol or the Counsel of Europe 1959/1978/2001 Convention &amp; Protocols should serve as a guideline for the discussions. The inclusion of contemporary types of cooperation (interception of telecommunication, JITs) and the use of modern technology (videoconference) cannot be overseen</p>	<p>The seizure and confiscation of proceeds of crime is an essential tool in the fight against organised crime. All recent bilateral MLA-treaties that Belgium has concluded (e.g. United States, Canada, Morocco, Brazil) contain seizure and confiscation provisions. A more recent feature to be added is a legal basis for asset sharing. As a basis for the discussions the 1990 &amp; 2005 Counsel of Europe Convention and Protocol may serve as a basis.</p>	<p>Yes. Other grounds for refusal should also be taken into consideration (death penalty, humanitarian clause). On a formal level, the grounds for refusal and the grounds for delayed execution (e.g. the incidence with an ongoing domestic investigation ) should be presented in more explicit way, for instance in a separate article.</p>	<p>The death penalty issue is of the utmost importance for Belgium. The Belgian MLA-Act of 9 December 2004 requires firm guaranties that the death penalty will not be sought, imposed or at least not executed before an MLA-request regarding offences that are punishable with the death penalty will be executed. Another issue of interest would be domestic legal restraints in Japan that may impede the cooperation.</p>
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<b>BG</b>	-	-	-	-	-
<b>CZ</b>	-	<p>- In general, the MLA agreement should provide for the widest measure of assistance and might also include also provisions on the exchange of banking information, cross-border surveillance, controlled delivery and video-conferencing.</p> <p>- Further discussions needed whether JITs and undercover investigations should be covered.</p>	<p>Yes, however further discussions with Japanese delegation needed about their ability to provide such assistance.</p>	Yes	<p>It would also be useful to discuss the possibility to conclude an Extradition Treaty based on a model of the 1959 European Convention on Extradition and its Protocols.</p>

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<b>DK</b>	In general the international cooperation concerning the mutual legal assistance to the greatest possible extent ought to be based on multilateral treaties, in particular UN-conventions and the Council of Europe Conventions.	-	-	-	<ul style="list-style-type: none"><li>- Entering a bilateral or EU agreement with a single country should only be carried out, if there is a substantial need for an agreement.</li><li>- No need for the European Union to enter into an (formal) agreement with Japan. Instead the aim should be put on trying to strengthen the practicable aspects of the cooperation between Japan and the Member States of the European Union.</li></ul>
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<p><b>DE</b></p>	<p>- Yes, informal talks is necessary to enable a better assessment of the added value and viability of a possible future agreement.</p> <p>- Before starting the formal negotiations, it is necessary to obtain a concrete mandate for negotiations by Council Decision.</p>	<p>- Yes, it is possible to take up all subject matters covered in EU 2000 MLA. However, the extent that they deviate, the concrete rules should be oriented more towards the Second Additional Protocol to the Convention of 1959.</p> <p>- In principle, no objections against including the topics and bank information and surveillance of telecommunications.</p>	<p>Agreement should not include rules with regard to the enforcement of decisions on confiscation or forfeiture.</p>	<p>Yes</p>	<p>- The questions of the prescribed channels of communication seems to continue to require clarification.</p> <p>- Questions of data protection, costs and formal requirements (including the question of language) for submission and execution of requests for mutual legal assistance should be addressed as well.</p>
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EE	-	Chapters I and II of MLA 2000 could be dealt with in MLA agreement with Japan; matters covered by Chapter III (interception and telecommunications) could be a subject for further discussions between EU Member States.	Yes, it would be possible to have provisions on seizure and confiscation.	Yes	-
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<p><b>EL</b></p>	<p>-</p>	<p>Not advisable to deal with all of the subject matter covered in the 2000 MLA Convention. Provisions relating, for instance, to the interception of telecommunications (Article 17 of the Convention), controlled deliveries (Article 12), the transfer of persons held in custody for purposes of investigation (Article 9) and so on, can be excluded.</p> <p>An assessment will need to be made on a case-by-case basis of: <i>(i)</i> the feasibility of implementing the measure requested in relation to the distance between the requesting State and the State in receipt of the request, given that meeting the request is likely to involve</p>	<p>Provisions on the seizure and confiscation of assets probably should be included in a future EU-Japan agreement.</p>	<p>No, bearing in mind special characteristics of JP law.</p> <p>Generalised requirement for assistance in relation to dual criminality, without restricting this to cases of enforcement of coercive measures.</p>	<p>In view of the differences between the law of the EU Member States and Japanese law (differences in relation to the imposition of the death penalty are already apparent), a nucleus of provisions acceptable to all the EU Member States, on which an express negotiating mandate can be given by the Council, should be carefully established in order to form the basis for future talks with Japan.</p>
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		<p>an excessive cost or expenditure of time, and <i>(ii)</i> the obstacles created by the differences between the legal systems of Europe and of Japan, given that some of those differences derive from fundamental principles of the systems in question.</p>			
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<b>ES</b>	-	-	-	-	-
<b>FR</b>	<p>Yes, however FR would like to have an exchange of views between the Member States in the framework of JHA Council.</p>	<p>Such treaty should cover the general provisions of MLA based on 1959 CoE MLA and complemented by 2000 EU MLA (in particular regarding the extension of the scope and assistance with regard to crimes committed by legal persons).</p> <ul style="list-style-type: none"> <li>- direct transmission of requests between the central authorities preferred..</li> <li>- provisions concerning restitution, temporary transfer of persons held in custody, hearing by video- or telephone conference, controlled deliveries, covert investigations, joint investigation teams and banking information could be included in an agreement (to be</li> </ul>	<p>Yes, this would create an added value.</p>	<p>Yes, except grounds for refusal connected with fiscal offences.</p>	-

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		<p>complemented by a data protection provision). However, it is not supported to include provisions as regards the interception of telecommunication.</p>			
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<b>IE</b>	Yes, with a view of assessing the possible added value of a MLA agreement between the EU and Japan.	Yes, all of the subject matters dealt with in the 2000 EU MLA could be considered for inclusion in an MLA Agreement with Japan.	Yes, in principle. However, the details of provisions on seizure and confiscation of assets will require careful examination.	Yes	IE strongly supports the position taken by the Presidency, that a provision allowing EU Member States to refuse assistance in cases involving a possible death penalty would be crucial.
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IT	-	<p>- It does not seem appropriate to take 2000 EU MLA as model for a bilateral agreement between EU and Japan. The main institutions provided for in the Convention presupposes a degree of reciprocal harmonisation and integration of national systems which is not present in case of Japan.</p> <p>- Any negotiating initiative should not to include provisions on controlled deliveries, joint investigation teams, covert investigations or interception of communications</p> <p>- Any agreement on judicial assistance with Japan should be limited to the institutions provided for in the 1959 CoE MLA in Criminal Matters.</p>	<p>The negotiating basis should be the provisions contained in the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988) and against Transnational Organised Crime (2000).</p>	Yes	<p>Negotiations covering the subject-matters of the 1959 CoE MLA in Criminal Matters, with the addition on provisions on seizure and confiscation, on the model of the UN international instruments, could be regarded as comprehensive.</p>
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<b>CY</b>	-	-	-	-	-
<b>LV</b>	-	Yes. Latvia supports using the subject matters dealt with in the 2000 EU MLA as basis for negotiations on possible Agreement with Japan.	Yes, in principle.	Yes	-
<b>LT</b>	-	-	-	-	-
<b>LU</b>	-	Yes	Yes	Yes	Future agreement should specifically include provisions on data protection and in this respect refer to specialty principle.
<b>HU</b>	-	-	-	-	HU considers that detailed questions are premature at this stage of the negotiation. A proper knowledge on the Japanese legal system is needed, especially regarding the constitutional and penal laws.

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<b>MT</b>	-	-	-	-	-
<b>NL</b>	<p>Policy debate as a first step would be necessary to discuss main questions; Why choose Japan? What has Japan to offer the EU Member States? Are there reasons to act collectively in the EU?</p>	-	-	-	<p>The NL value a deliberate step by step approach. NL would appreciate that a discussion in the CCM Working Party would be scheduled.</p>

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<b>AT</b>	Yes. In view of the fact that mutual legal assistance between Japan and the Ms of the EU is not currently covered by any bilateral treaties, such an agreement seems to have a clear added value.	Yes, potentially most of the subject matters could be covered, with the exception of interception of telecommunications, controlled delivery and covert investigations. Provisions on banking information could be included. Agreement should only apply to requests by judicial authorities and not also to requests by certain administrative authorities.	Yes	Yes	AT is of the view that, other than the question of death penalty, the issue of the double criminality requirement should also be addressed by the Presidency in the context of further exploratory talks with Japan.
<b>PL</b>	-	-	-	-	-
<b>PT</b>	-	-	-	-	-

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RO	Yes, in principle	Yes	Yes	Yes, however depending the Japanese legal system, other grounds for refusal could be regulated as well.	It should be kept in mind the conclusions of the work of expert committees of the Council of Europe (PC – OC and PC – TJ), according to which the death penalty in the requesting State does not have to be a ground for refusing mutual assistance, all the more since a request for assistance can obtain evidence not only against, but also in favour of an accused or defendant.
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SI	Yes	<p>- Yes. Provisions on hearing by video conference and joint investigation teams are two subject matters that could be especially useful in MLA cases.</p> <p>- With regard to inclusion of provisions on interception of telecommunications, provisions within the meaning of Art 18 of 2000 EU MLA would suffice, whereas at present provisions as in Art 19 and 20 are not deemed possible. As concerns provisions of controlled delivery, they maybe unnecessary in practice.</p>	Yes	Yes, in principle	-
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<b>SK</b>	Yes. However, possible adoption of such treaty has its added value only if it is a comprehensive MLA treaty.	Yes. Such treaty should cover not only matters outlined in a Presidency document, but also the basic matters of MLA; service of documents, hearing of witnesses etc. As regards the interception of telecommunication, it has to be further examined.	SK believes that a specific regulation of seizure and confiscation is not appropriate as this area is covered in the CoE Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, which should serve the purpose.	Yes. No extension of grounds for refusal would be justified.	SK does not deem necessary to address specifically the issue of a death penalty in the field of mutual legal assistance.
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<b>FI</b>	<p>The question of starting negotiation on a MLA Agreement with Japan relates to the general question on relations to third states. Starting negotiations on a wide-ranging MLA Agreement with Japan raises the questions of relations to other third states.</p>	<p>Yes. The scope of a possible Agreement could be quite wide, provided that most of the provisions are discretionary. If interception of telecommunications and covert investigations are included, they could be acceptable only on a very limited scope compared to MLA 2000. The starting point could be the content of the 1959 CoE MLA.</p>	Yes	<p>Yes, in addition death penalty issue should be taken properly into account.</p>	<p>- At this stage data protection and the level of human rights protection in criminal proceedings might be issues, which should be addressed.</p> <p>- EU Member States should discuss whether a possible MLA Agreement should be made between EU and its Member States and Japan so to be in line with agreements made with USA.</p>
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<b>SE</b>	Yes, in principle	Yes	Yes	-	Welcomes the Presidency to give information in the CCM on further procedure with Japanese delegation.
<b>UK</b>	Yes, in principle in a view to assessing the possible added value of an agreement. The UK however notes that such negotiations are resource intensive and asks that focus be given as to the need for such an agreement.	Yes, on a provisional basis	Yes	Yes	UK would welcome exploratory discussions with the Japanese delegation with a view to including in any future Treaty an article modelled on Article 22 of the 1959 CoE MLA Convention perhaps modified so as to include a minimum threshold.

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