



Council of the
European Union

056524/EU XXVI. GP
Eingelangt am 05/03/19

Brussels, 5 March 2019
(OR. en)

10058/08
DCL 1

COPEN 107
COASI 105

DECLASSIFICATION

of document:	ST 10058/08 RESTREINT UE/EU RESTRICTED
dated:	29 May 2008
new status:	Public
Subject:	Information concerning informal, exploratory consultations on a possible agreement between the European Union and Japan on mutual legal assistance

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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**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 29 May 2008

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**COPEN 107
COASI 105**

NOTE

From : General Secretariat of the Council
To : Delegations

Prev doc : 7019/07 RESTREINT UE COPEN 27 COASI 32, 11941/07 RESTREINT UE
COPEN 112 COASI 97

Subject : Information concerning informal, exploratory consultations on a possible
agreement between the European Union and Japan on mutual legal assistance

Delegations are kindly informed on the Model Treaty, as set out in the Annex, provided by the Japanese delegation as basis for possible negotiations between EU and Japan on Mutual Legal Assistance Agreement.

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ANNEX

(MODEL)
TREATY BETWEEN
JAPAN AND [...]
ON MUTUAL LEGAL ASSISTANCE
IN CRIMINAL MATTERS

Japan and [...],

Desiring to establish more effective cooperation between Japan and [...] in the area of mutual legal assistance in criminal matters,

Desiring that such cooperation will contribute to combating crime,

Have agreed as follows:

Article 1

1. Each State shall, upon request by the other State, provide mutual legal assistance (hereinafter referred to as “assistance”) in connection with investigations, prosecutions and other proceedings in criminal matters in accordance with the provisions of this Treaty.
2. Assistance shall include the following:
 - (1) taking testimony, statements or items, including through the execution of search and seizure;
 - (2) examining persons, items or places;
 - (3) locating or identifying persons, items or places;
 - (4) providing items in the possession of the legislative, administrative or judicial authorities of the requested State as well as the local authorities thereof;

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- (5) informing a person of an invitation to appear in the requesting State or serving a document requiring a person to appear in the requesting State;
- (6) transfer of a person in custody for testimony or other purposes;
- (7) serving documents related to criminal proceedings other than those provided for in subparagraph (5);
- (8) assisting in proceedings related to forfeiture and immobilization of proceeds or instrumentalities of criminal offenses; and
- (9) any other assistance permitted under the laws of the requested State and agreed upon between the Central Authorities of the States.

The term “items” as used in this Treaty means documents, records and articles of evidence.

Article 2

1. Each State shall designate the Central Authority that is to perform the functions provided for in this Treaty. For Japan, the Central Authority shall be the Minister of Justice or the National Public Safety Commission or persons designated by them. For [...], the Central Authority shall be [...].
2. Requests for assistance under this Treaty shall be made by the Central Authority of the requesting State to the Central Authority of the requested State.
3. The Central Authorities of the States shall communicate directly with one another for the purposes of this Treaty.

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Article 3

1. The Central Authority of the requested State may refuse assistance if the requested State considers that:

- (1) the request relates to a political offense;
- (2) the execution of the request would impair its security or other essential interests;
- (3) the request does not conform to the requirements of this Treaty;

(4) there are well-founded reasons to suppose that the request for assistance has been made with a view to prosecuting or punishing a person by reason of race, religion, nationality, ethnic origin, political opinions or sex, or that such person's position may be prejudiced for any of those reasons; or

(5) the conduct that is the subject of the investigation, prosecution or other proceeding in the requesting State would not constitute a criminal offense under the laws of the requested State.

2. Before refusing assistance pursuant to paragraph 1, the Central Authority of the requested State shall consult with the Central Authority of the requesting State to consider whether assistance can be provided subject to such conditions as the requested State may deem necessary. If the requesting State accepts such conditions, the requesting State shall comply with them.

3. If assistance is refused, the Central Authority of the requested State shall inform the Central Authority of the requesting State of the reasons for the refusal.

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Article 4

1. The Central Authority of the requesting State shall make a request in writing. However, the Central Authority of the requesting State may make a request by any other reliable means of communication if the Central Authority of the requested State considers it appropriate to receive a request by that means. In such cases, the Central Authority of the requesting State shall provide supplementary confirmation of the request in writing promptly thereafter, if the Central Authority of the requested State so requires. A request shall be accompanied by a translation into the language of the requested State or, in case of urgency, into the English language unless otherwise agreed between the Central Authorities of the States.

2. A request shall include the following:

(1) the name of the authority conducting the investigation, prosecution or other proceeding;

(2) the facts pertaining to the subject of the investigation, prosecution or other proceeding; the nature and the stage of the investigation, prosecution or other proceeding; and the text of the relevant laws of the requesting State;

(3) a description of the assistance requested; and

(4) a description of the purpose of the assistance requested.

3. To the extent necessary and possible, a request shall also include the following:

(1) information on the identity and whereabouts of any person from whom testimony, statements or items are sought;

(2) a description of the manner in which testimony, statements or items are to be taken or recorded;

(3) a list of questions to be asked of the person from whom testimony, statements or items are sought;

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- (4) a precise description of persons or places to be searched and of items to be sought;
- (5) information regarding persons, items or places to be examined;
- (6) a description of the manner in which an examination of persons, items or places is to be conducted and recorded, including the format of any written record to be made concerning the examination;
- (7) information regarding persons, items or places to be located or identified;
- (8) information on the identity and location of a person to be served, that person's relationship to the proceedings, and the manner in which service is to be made;
- (9) a description of any particular procedure to be followed in executing the request;
- (10) information on the allowances and expenses to which a person whose appearance is sought before the appropriate authority in the requesting State will be entitled;
- (11) a description of the reason for confidentiality concerning the request; and
- (12) any other information that should be brought to the attention of the requested State to facilitate the execution of the request.

4. If the requested State considers that the information contained in a request for assistance is not sufficient to meet the requirements under this Treaty to enable the execution of the request, the Central Authority of the requested State may request that additional information be provided.

Article 5

1. The requested State shall promptly execute a request in accordance with the relevant provisions of this Treaty. The competent authorities of the requested State shall take every possible measure in their power to ensure the execution of a request.

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2. A request shall be executed in the manner or procedure provided for by the laws of the requested State. The manner or particular procedure described in a request referred to in paragraph 3(2), 3(6) or 3(9) of Article 4 shall be followed to the extent it is not prohibited by the laws of the requested State, and where it deems appropriate.
3. If the execution of a request is deemed to interfere with an ongoing investigation, prosecution or other proceeding in the requested State, the Central Authority of the requested State may postpone the execution or make the execution subject to conditions deemed necessary after consultations between the Central Authorities of the States. If the requesting State accepts such conditions, the requesting State shall comply with them.
4. The requested State shall make its best efforts to keep confidential the fact that a request has been made, the contents of a request, the outcome of the execution of a request and other relevant information concerning the execution of a request if such confidentiality is requested by the Central Authority of the requesting State. If a request cannot be executed without disclosure of such information, the Central Authority of the requested State shall so inform the Central Authority of the requesting State, which shall then determine whether the request should nevertheless be executed.
5. The Central Authority of the requested State shall respond to reasonable inquiries by the Central Authority of the requesting State concerning the status of the execution of a request.
6. The Central Authority of the requested State shall promptly inform the Central Authority of the requesting State of the result of the execution of a request, and shall provide the Central Authority of the requesting State with the testimony, statements or items obtained as a result. If a request cannot be executed in whole or in part, the Central Authority of the requested State shall inform the Central Authority of the requesting State of the reasons therefor.

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Article 6

1. Unless otherwise agreed between the Central Authorities of the States, the requested State shall pay all costs related to the execution of a request, except for the fees of an expert witness, the costs of translation, interpretation and transcription, and the allowances and expenses related to travel of persons pursuant to Articles 13 and 14. Such fees, costs, allowances and expenses shall be paid by the requesting State.
2. If it becomes apparent that expenses of an extraordinary nature are required to execute a request, the Central Authorities of the States shall consult to determine the conditions under which a request will be executed.

Article 7

1. The requesting State shall not use any testimony, statements or items provided under this Treaty other than in the investigation, prosecution or other proceeding described in a request without prior consent of the Central Authority of the requested State.
2. The Central Authority of the requested State may request that testimony, statements or items provided under this Treaty be kept confidential or be used only subject to other conditions it may specify. If the requesting State agrees to such confidentiality or accepts such conditions, it shall comply with them.

Article 8

1. The Central Authority of the requested State may request that the requesting State transport and maintain items provided under this Treaty in accordance with the conditions specified by the Central Authority of the requested State, including the conditions deemed necessary to protect third-party interests in the items to be transferred.
2. The Central Authority of the requested State may request that the requesting State return any items provided under this Treaty in accordance with the conditions specified by the Central Authority of the requested State, after such items have been used for the purpose described in a request.

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3. The requesting State shall comply with a request made pursuant to paragraph 1 or 2. When such a request has been made, the requesting State shall not examine the items without the prior consent of the Central Authority of the requested State if the examination impairs or could impair the item.

Article 9

1. The requested State shall take testimony, statements or items. In taking testimony or items, the requested State shall employ compulsory measures, including search and seizure, if such measures are necessary and the request includes information justifying those measures under the laws of the requested State.

2. The requested State shall make its best efforts to make possible the presence of such persons as specified in a request for taking testimony, statements or items during the execution of the request, and to allow such persons to question the person from whom testimony, statements or items are sought. In the event that such direct questioning is not permitted, such persons shall be allowed to submit questions to be posed to the person from whom testimony, statements or items are sought.

3. (1) If a person, from whom testimony, statements or items are sought pursuant to this Article, asserts a claim of immunity, incapacity or privilege under the laws of the requesting State, testimony, statements or items shall nevertheless be taken.

(2) In cases where testimony, statements or items are taken in accordance with sub-paragraph (1), they shall be provided, together with the claim referred to in that sub-paragraph, to the Central Authority of the requesting State for resolution of the claim by the competent authorities of the requesting State.

Article 10

1. The requested State shall examine persons, items or places. The requested State shall employ compulsory measures in order to do so, if such measures are necessary and the request includes information justifying those measures under the laws of the requested State.

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2. The requested State shall make its best efforts to make possible the presence of such persons as specified in a request for examining persons, items or places during the execution of a request.

Article 11

The requested State shall make its best efforts to locate or identify persons, items or places.

Article 12

1. The requested State shall provide the requesting State with items that are in the possession of the legislative, administrative or judicial authorities of the requested State as well as the local authorities thereof and are available to the general public.

2. The requested State shall make its best efforts to provide the requesting State with items that are in the possession of the legislative, administrative or judicial authorities of the requested State as well as the local authorities thereof and are not available to the general public, to the same extent and under the same conditions as such items would be available to its investigative and prosecuting authorities.

Article 13

1. The requested State shall inform a person in the requested State of an invitation to appear before the appropriate authority in the requesting State. The requested State shall effect service of a document requiring the appearance of a person before the appropriate authority in the requesting State.

2. The Central Authority of the requesting State shall inform the Central Authority of the requested State of the extent to which the allowances and expenses for the appearance under paragraph 1 will be paid by the requesting State. The Central Authority of the requested State shall, upon request, promptly inform the Central Authority of the requesting State of the response of the person whose appearance is sought.

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3. Where a request concerns service of a judicial document requiring the appearance of a person before the appropriate authority in the requesting State, the request shall be received by the requested State not less than fifty (50) days before the scheduled appearance date. In urgent cases, the requested State may waive this requirement. In informing the result of the execution of such a request in accordance with the provisions of paragraph 6 of Article 5, the Central Authority of the requested State shall inform the Central Authority of the requesting State in writing of the fact that the service was effected, as well as the date, place and manner of the service.

4. A person who appears before the appropriate authority in the requesting State under this Article shall not be subject to detention or any restriction of personal liberty in its territory by reason of any conduct or conviction that precedes the departure from the requested State of the person, nor shall the person be obliged to give evidence in any criminal proceeding or to assist in any proceeding other than the proceeding which is specified in the request. If the above safe conduct cannot be provided, the Central Authority of the requesting State shall so specify in the request in order for the person to be informed accordingly and be able to make a decision whether to appear before the said authority.

5. (1) The safe conduct provided in accordance with paragraph 4 to the person who appears before the appropriate authority in the requesting State under this Article shall cease when:

- (a) fifteen(15) days have passed after the person was notified in writing by the appropriate authority that the appearance of the person is no longer necessary;
- (b) the person, having left the requesting State, voluntarily returns to it; or
- (c) the person fails to appear before the appropriate authority on the scheduled appearance date due to the reasons other than those arising out of the circumstances beyond the control of that person.

(2) When the notification is made pursuant to sub-paragraph (1)(a), or when the safe conduct ceases pursuant to sub-paragraph (1)(b) or (1)(c), the Central Authority of the requesting State shall so inform the Central Authority of the requested State without delay.

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6. A person who does not appear before the appropriate authority in the requesting State under this Article shall not, by reason thereof, be liable to any penalty or be subjected to any compulsory measure in the requesting State, notwithstanding any contrary statement in the request or a document related to the appearance of the person.

Article 14

1. A person in the custody of the requested State whose presence in the territory of the requesting State is necessary for testimony or other purposes shall be transferred for those purposes to the requesting State, if the person consents and if the Central Authorities of the States agree, when permitted under the laws of the requested State.

2. (1) The requesting State shall keep the person transferred pursuant to paragraph 1 in the custody of the requesting State, unless permitted by the requested State to do otherwise.

(2) The requesting State shall immediately return the person transferred to the requested State, as agreed beforehand, or as otherwise agreed between the Central Authorities of the States.

(3) The person transferred shall receive credit for service of the sentence imposed in the requested State for the time served in the custody of the requesting State.

3. The person transferred to the requesting State pursuant to this Article shall enjoy the safe conduct provided for in Article 13 in the requesting State until the return to the requested State, unless the person consents and the Central Authorities of the States agree otherwise.

4. A person who does not consent to be transferred pursuant to this Article shall not, by reason thereof, be liable to any penalty or be subjected to any compulsory measure in the requesting State, notwithstanding any contrary statement in the request.

Article 15

1. The requested State shall effect service of documents related to criminal proceedings, other than those provided for in paragraph 1 of Article 13, that are transmitted to it for this purpose by the requesting State.

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2. The Central Authority of the requested State shall inform the Central Authority of the requesting State in writing of the result of the execution of the request under this Article in the manner provided in paragraph 3 of Article 13.

Article 16

1. The requested State shall assist, to the extent permitted by its laws, in proceedings related to the forfeiture of the proceeds or instrumentalities of criminal offenses. Such assistance may include action to temporarily immobilize the proceeds or instrumentalities pending further proceedings.

2. The requested State that has custody over proceeds or instrumentalities of criminal offenses as a result of the assistance under paragraph 1 may transfer such proceeds or instrumentalities, in whole or in part, to the requesting State, to the extent permitted by the laws of the requested State and upon such conditions as it deems appropriate.

Article 17

Nothing in this Treaty shall prevent either State from requesting assistance from or providing assistance to the other State in accordance with other applicable international agreements, or pursuant to its laws that may be applicable.

Article 18

1. The Central Authorities of the States shall hold consultations for the purpose of facilitating speedy and effective assistance under this Treaty, and may decide on such measures as may be necessary for this purpose.

2. The States shall, if necessary, hold consultations on any matter that may arise in the interpretation or implementation of this Treaty.

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Article 19

1. This Treaty shall be subject to ratification.
2. This Treaty shall enter into force on the thirtieth day after the date of the exchange of the instruments of ratification.
3. This Treaty shall apply to any request for assistance presented on or after the date upon which this Treaty enters into force, whether the acts relevant to the request were committed before, on or after that date.
4. Either State may terminate this Treaty at any time by giving six months written notice to the other State.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Treaty.

DONE at [...], in duplicate, in the Japanese, [...] and [...] languages, all texts being equally authentic, this [...]th day of [...], 20[...]. In case of any divergence of interpretation, the English text shall prevail.

FOR JAPAN:

FOR [...]:
