

EU/Japan agreement: mutual legal assistance in criminal matters

2009/0188(NLE) - 27/11/2009 - Document attached to the procedure

This document sets out the Agreement between the EU and Japan on mutual legal assistance in criminal matters.

The main provisions are as follows:

Object and purpose: the requested State shall, upon request by the requesting State, provide mutual legal assistance ("assistance") in connection with investigations, prosecutions and other proceedings, including judicial proceedings, in criminal matters in accordance with the provisions of this Agreement. The Agreement does not apply to extradition, transfer of proceedings in criminal matters and enforcement of sentences other than confiscation provided for under the terms of the Agreement.

Scope of assistance: assistance shall include the following: (a) taking testimony or statements; (b) enabling the hearing by videoconference; (c) obtaining items, including through the execution of search and seizure; (d) obtaining records, documents or reports of bank accounts; (e) examining persons, items or places; (f) locating or identifying persons, items or places; (g) providing items in the possession of the legislative, administrative or judicial authorities of the requested State as well as the local authorities thereof; (h) serving documents and informing a person of an invitation to appear in the requesting State; (i) temporary transfer of a person in custody for testimony or other evidentiary purposes; (j) assisting in proceedings related to freezing or seizure and confiscation of proceeds or instrumentalities; and (k) any other assistance permitted under the laws of the requested State and agreed upon between a Member State and Japan.

Designation and responsibilities of Central Authorities: each State shall designate the Central Authority that is the authority responsible for sending, receiving and responding to requests for assistance, the execution of such requests or their transmission to the authorities having jurisdiction to execute such requests under the laws of the State. The Central Authorities are listed in Annex I to the Agreement. The Central Authorities of the Member States and Japan shall communicate directly with one another for the purpose of the Agreement. The authorities which are competent under the laws of the States to originate requests for assistance are set out in Annex II to this Agreement.

Requests for assistance: the requesting State shall make a request in writing and in urgent cases, fax or e-mail. The Agreement prescribes the matters that the request must contain, including the name of the competent authority conducting the investigation, the facts pertaining to the subject of the investigation, and a description of the assistance requested as well as the purpose of the assistance requested. A request shall, to the extent possible, include the following: (a) information on the identity and location of any person from whom testimony, statements or items are sought; (b) a list of questions to be asked to the person from whom testimony or statements are sought; (c) a precise description of persons or places to be searched and of items to be sought; (d) a description of why the requesting State considers that the requested records, documents or reports of bank accounts are relevant and necessary for the purpose of the investigation into the offence, and other information that may facilitate the execution of the request; (e) information regarding persons, items or places to be examined; (f) information regarding persons, items or places to be located or identified; (g) information on the identity and location of a person to be served with a document or informed of an invitation, that person's relationship to the proceeding, and the manner in which service is to be made; (h) information on the allowances and expenses to which a person whose appearance is sought before the competent authority of the requesting State will be entitled;

and (i) a precise description of proceeds or instrumentalities, the location thereof, and the identity of the owner thereof.

Language: a request and any documents attached thereto shall be accompanied by a translation into an official language of the requested State or, in all or, in urgent cases, into a language specified in Annex III.

Execution of requests: the text sets out the manner of execution of requests and makes provision for solving practical problems, interference with ongoing investigations and confidentiality.

Grounds for refusal: assistance may be refused if the requested State considers that: (a) a request concerns a political offence or an offence connected with a political offence; (b) the execution of a request is likely to prejudice its sovereignty, security, ordre public or other essential interests. For the purpose of this sub-paragraph, the requested State may consider that the execution of a request concerning an offence punishable by death under the laws of the requesting State or, in the relations between one Member State, set out in Annex IV, and Japan, an offence punishable by life imprisonment under the laws of the requesting State, could prejudice essential interests of the requested State, unless the requested State and the requesting State agree on the conditions under which the request can be executed; (c) 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; (d) the person, who is subject to criminal investigations, prosecutions or other proceedings, including judicial proceedings, for which the assistance is requested, in the requesting State, has already been finally convicted or acquitted for the same facts in a Member State or Japan; or (e) a request does not conform to the requirements of the Agreement. The requested State may refuse assistance which would necessitate coercive measures under its laws if it considers that the conduct that is the subject of the investigation, prosecution or other proceeding, including judicial proceeding, in the requesting State would not constitute a criminal offence under the laws of the requested State. In the relations between Japan and two Member States, set out in Annex IV to the Agreement, assistance may be refused if the requested State considers that the conduct that is the subject of the investigation, prosecution or other proceeding, including judicial proceeding, in the requesting State would not constitute a criminal offence under the laws of the requested State. Assistance shall **not be refused on the ground of bank secrecy**.

Costs: the requested State shall bear all costs related to the execution of a request, unless otherwise agreed between the requesting State and the requested State. However, the requesting State shall bear: (a) the fees of an expert witness; (b) the costs of translation, interpretation and transcription; (c) the allowances and expenses related to travel of persons (d) the costs of establishing a video link and costs related to the servicing of a video link in the requested State; and (e) the costs of an extraordinary nature; unless otherwise agreed between the requesting State and the requested State.

The Agreement also contains provisions on the following:

- limitations on use of testimony, statements, items or information
- transport, maintenance and return of items
- taking of testimony or statements
- hearing by videoconference
- obtaining of items
- bank accounts
- examination of persons, items or places
- locating or identifying persons, items or places
- providing items in possession of the legislative, administrative, judicial or local authorities
- service of documents and informing a person of an invitation
- safe conduct
- temporary transfer of persons in custody

- freezing or seizure and confiscation of proceeds or instrumentalities
- spontaneous exchange of information
- relation to other instruments
- consultations
- territorial application
- status of annexes
- entry into force and termination.