

EU/Japan agreement: mutual legal assistance in criminal matters

2009/0188(NLE) - 07/10/2010 - Final act

PURPOSE: to conclude the Agreement between the European Union and Japan on mutual legal assistance in criminal matters.

LEGISLATIVE ACT: Council Decision 2010/616/EU on the conclusion of the Agreement between the European Union and Japan on mutual legal assistance in criminal matters.

BACKGROUND: on 26-27 February 2009, the Council authorised the Presidency, assisted by the Commission, to open negotiations for an Agreement between the European Union and Japan on mutual legal assistance in criminal matters. In accordance with Council Decision 2010/88/CFSP/JHA of 30 November 2009, the Agreement between the European Union and Japan on mutual legal assistance in criminal matters was signed on 30 November and 15 December 2009, subject to its conclusion.

CONTENT: the Council has concluded this agreement between the EU and Japan on mutual legal assistance in criminal matters. It is the first such agreement between the two parties providing a solid basis for mutual legal assistance between all 27 Member States and Japan, while at the same time ensuring respect for the fundamental values of the EU. Hitherto, no Member States have concluded any bilateral mutual legal assistance treaties with Japan.

The agreement provides for a wide range of measures, including the taking of evidence, the seizure of the proceeds of crime, obtaining bank information and conducting hearings and taking of testimony by videoconferencing. The information obtained can be used only for the specific purpose set out in the request.

The agreement also contains an adequate set of grounds of refusal (political offence exception, non-discrimination clause, *ne bis in idem*, double criminality). It explicitly stipulates that where a request concerns an offence punishable by death, the requested member state may refuse assistance unless there is an agreement with Japan on the conditions under which it can use such evidence, i.e. if Japan ensures that it will not use the evidence in any proceedings leading up to the death penalty.

The main provisions are as follows:

Object and purpose: the purpose of this Agreement is to establish a strengthened cooperation between the EU Member States and Japan on mutual assistance in criminal matters. The requested State shall, upon request by the requesting State, provide mutual legal assistance in connection with investigations, prosecutions and other proceedings, including judicial proceedings, in criminal matters in accordance with the provisions of this Agreement. This Agreement does not apply to extradition, transfer of proceedings in criminal matters and enforcement of sentences other than confiscation decisions provided for in 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.

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.

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. 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, inter alia, the fees of an expert witness and the costs of translation, interpretation and transcription.

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: Member States and Japan may, without prior request, provide information relating to criminal matters to each other to the extent permitted by the laws of the providing State. The providing State may impose conditions on the use of such information by the receiving State.

Relation to other instruments: nothing in this Agreement shall prevent any State from requesting assistance or providing assistance in accordance with other applicable international agreements.

Consultations: the Central Authorities of the Member States and Japan shall, if necessary, hold consultations for the purpose of resolving any difficulties with regard to the execution of a request, and facilitating speedy and effective assistance under this Agreement, and may decide on such measures as may be necessary for this purpose.

Territorial application: in accordance with Protocol on the Position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the Treaty on EU and to the TFEU, these Member States have notified their wish to take part in the adoption and application of this Decision. On the other hand, Denmark is not taking part in the adoption of this Decision and is not bound by it or subject to its application.

ENTRY INTO FORCE: 07/10/2010. The date of entry into force of the Agreement will be published in the *Official Journal of the European Union*.