

Basic information	
2009/0188(NLE) NLE - Non-legislative enactments Decision	Procedure completed
EU/Japan agreement: mutual legal assistance in criminal matters Subject 7.40.04 Judicial cooperation in criminal matters Geographical area Japan	

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	<div style="border: 1px solid red; display: inline-block; padding: 2px;">LIBE</div> Civil Liberties, Justice and Home Affairs	IACOLINO Salvatore (PPE)	04/03/2010
Council of the European Union	Council configuration	Meetings	Date
	Justice and Home Affairs (JHA)	3034	2010-10-07
	Education, Youth, Culture and Sport	2993	2010-02-15
European Commission	Commission DG	Commissioner	
	Justice and Consumers	REDING Viviane	

Key events			
Date	Event	Reference	Summary
17/12/2009	Preparatory document	COM(2009)0706 	
02/02/2010	Legislative proposal published	05308/2010	Summary
25/02/2010	Committee referral announced in Parliament		
23/06/2010	Vote in committee		Summary
25/06/2010	Committee report tabled for plenary, 1st reading/single reading	A7-0209/2010	
07/09/2010	Decision by Parliament	T7-0297/2010	Summary
07/09/2010	Results of vote in Parliament		
07/10/2010	Act adopted by Council after consultation of Parliament		

07/10/2010	End of procedure in Parliament		
15/10/2010	Final act published in Official Journal		

Technical information	
Procedure reference	2009/0188(NLE)
Procedure type	NLE - Non-legislative enactments
Procedure subtype	Consent by Parliament
Legislative instrument	Decision
Legal basis	Treaty on the Functioning of the European Union TFEU 082-p1 Treaty on the Functioning of the European Union TFEU 218-p6a
Other legal basis	Rules of Procedure EP 165
Stage reached in procedure	Procedure completed
Committee dossier	LIBE/7/02080

Documentation gateway				
European Parliament				
Document type	Committee	Reference	Date	Summary
Committee draft report		PE442.888	03/06/2010	
Committee report tabled for plenary, 1st reading/single reading		A7-0209/2010	25/06/2010	
Text adopted by Parliament, 1st reading/single reading		T7-0297/2010	07/09/2010	Summary
Council of the EU				
Document type	Reference	Date	Summary	
Document attached to the procedure	15915/2009	27/11/2009	Summary	
Legislative proposal	05308/2010	02/02/2010	Summary	
European Commission				
Document type	Reference	Date	Summary	
Preparatory document	COM(2009)0706 	17/12/2009		

Additional information		
Source	Document	Date
National parliaments	IPEX	
European Commission	EUR-Lex	

Final act

Decision 2010/0616
OJ L 271 15.10.2010, p. 0003

Summary

EU/Japan agreement: mutual legal assistance in criminal matters

2009/0188(NLE) - 02/02/2010 - Legislative proposal

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

PROPOSED ACT: Council Decision.

CONTENT: in February 2009, the Council authorised the Presidency, assisted by the Commission, to open negotiations for an Agreement between the EU and Japan on mutual legal assistance in criminal matters. The Agreement was signed on 30 November and 15 December 2009, subject to its conclusion.

The aim of this proposal is to conclude, on behalf of the Union, the Agreement between the European Union and Japan on mutual legal assistance in criminal matters.

With the entry into force of the Treaty of Lisbon on 1 December 2009, the procedures to be followed by the Union in order to conclude the Agreement are governed by Article 218 of the Treaty on the Functioning of the European Union.

Accordingly, the Council proposes the conclusion of the Agreement between the EU and Japan on mutual legal assistance in criminal matters. (For the text of the Agreement and its summary please refer to document 15915/2009.)

Territorial application: in accordance with the 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 European Union and to the Treaty on the Functioning of the European Union, these Member States have notified their wish to take part in the adoption and application of this Decision. Denmark, on the other hand, is not taking part in the adoption of the Decision and is not bound by it or subject to its application.

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.

EU/Japan agreement: mutual legal assistance in criminal matters

2009/0188(NLE) - 07/09/2010 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted a legislative resolution in which it gives its consent to the conclusion of the Agreement between the European Union and Japan on mutual legal assistance in criminal matters.

EU/Japan agreement: mutual legal assistance in criminal matters

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
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- 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*.