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**NOTE**

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From: Commission

To: Working Party on Cooperation in Criminal matters

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Subject: Agreement of 20 November 2009 between the European Union and Japan on mutual legal assistance in criminal matters

- Presentation by the Commission of its report concerning the EU-Japan day on 14 July 2016, including recommendations

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Delegations will find attached the report of the Commission concerning the EU-Japan day on 14 July 2016, including recommendations.

**Report on the EU-Japan Day of 14 July 2016****I. Introduction**

The Agreement on Mutual Legal Assistance between the European Union and the Japan ('the Agreement') was signed on 30 November 2009 and entered into force on 2 January 2011. The purpose of the Agreement is to establish more effective cooperation between the Member States and Japan in the area of mutual legal assistance in criminal matters ('MLA'). The Agreement is the first 'self-standing' mutual legal assistance agreement between the EU and a third country, making up for the absence of bilateral agreements with Member States. It thus offers significant added value for the relations between Member States and Japan.

Five years after the Agreement entered into force, a stock-taking exercise took place in the first half of 2016. In order to facilitate cooperation under the Agreement, it was decided to organise a meeting for practitioners and central authorities of the Member States and Japan to share information on their legal and judicial systems and experience of MLA, including problems and best practices. The meeting took place on 14 July 2016 ('EU-Japan Day') at the premises of the Japanese Embassy in Brussels, and focused on the specificities and requirements of the Japanese legal system. Before the meeting, EU Member States were invited by the Council of the European Union to complete a questionnaire<sup>1</sup> on their experience of the Agreement and to discuss the issue at the COPEN Working Group meeting ahead of the EU-Japan Day on the same date.

This Report summarises the information gathered during the EU-Japan Day and during its preparation and the recommendations presented at this meeting.

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<sup>1</sup> Cf. doc. 6935/16 of 14 March 2016 containing a questionnaire on the application of the Agreement; doc. 10783/1/16 of 13 July 2016 containing a summary of the replies.

## II. Summary of the EU-Japan MLA Agreement

The Agreement offers a framework between the parties to provide mutual legal assistance. It covers the stages of investigation and prosecution of crimes and other proceedings in criminal matters and includes modern cooperation tools such as videoconferencing or the exchange of bank information.

Requests may consist of:

- taking testimonies or statements and hearings by videoconference (Article 3 (a),(b), Articles 15 and 16);
- obtaining items, including through search and seizure (Article 3 (c), Article 17);
- obtaining information on bank accounts (Article 3 (d), Article 18);
- examining, locating or identifying persons, items or places (Article 3 (e)(f), Articles 19 and 20);
- providing items in possession of the authorities, including criminal records (Article 3 (g), Article 21);
- serving documents (Article 3 (h), Article 22);
- transferring persons in custody for the purpose of testimony (Article 3 (i) and Articles 23 and 24);
- assisting in the freezing or seizure and confiscation of proceeds of crime (Article 3 (j) and Article 25);
- any other assistance permitted under the laws of the requested State and agreed upon between a Member State and Japan (Article 3(1) (k)).

The Agreement does not apply to extradition, transfer of proceedings in criminal matters and enforcement of sentences other than confiscation.

The Agreement also provides that central authorities have responsibility for sending, receiving and responding to requests for assistance (Article 4) and need to communicate directly with one another, rather than via diplomatic routes.<sup>2</sup>

An important safeguard is that assistance may be refused where the execution of a request would be considered to impair an essential interest of the requested State (Article 11). This article e.g. allows a state in case of a request concerning an offence carrying the death penalty to refuse assistance as prejudicing the essential interests of the state.

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<sup>2</sup> Cf. Annex I to the Agreement, containing a list of Central Authorities.

Article 26 of the Agreement provides for the possibility of spontaneous exchange of information. In accordance with this article, 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.

To facilitate the application of MLA procedure under the Agreement, a *model fact-sheet* has been developed<sup>3</sup> and filled-in by all Parties containing information on the practical conduct of mutual legal assistance procedures. These fact-sheets are living documents and may be subject to amendment and can be updated at any time<sup>4</sup>.

### **III. Some statistics on the use of the EU-Japan MLA Agreement**

#### **1. Overview**

Statistics on the use of MLA requests are based on the answers of 25 Member States to the questionnaire and on information provided by Japan during the EU-Japan Day. The available data, though not complete, provides an indication of the volume of MLA. In conclusion, the MLA traffic is relatively low (just above 100 in each way, Ireland has no experience neither as requesting or requested state with the Agreement).

For Japan, the number of MLA requests for the period of 2011–2015 are 121 incoming and 101 outgoing cases. The amount of incoming cases almost doubled compared to the period 2006-2010, before the MLA Agreement came into force, whereas the amount of outgoing cases increased by almost 5 times.

The 25 Member States who replied back to the questionnaire have recorded 141 outgoing<sup>5</sup> and 87 incoming requests in total since 2011.

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<sup>3</sup> The content of the model fact-sheet has been discussed at the meetings of the COPEN Working Party on 31 March 2011 and 15 June 2011. Japan also made suggestions to supplement the model.

<sup>4</sup> Most recently, the Japanese mission informed the Council on the update of its fact-sheets on the practical conduct of mutual legal assistance procedures under the EU-Japan MLA Agreement, cf. Council document 15481/16.

<sup>5</sup> 20 Member States' competent authorities sent at least one MLA request to Japan following the entry into force of the Agreement in January 2011

## 2. Member States as requesting State

The main offenses for which assistance of Japan has been requested were fraud, including internet fraud and fiscal fraud, swindle, forgery of documents and use of false documents (15 Member States), followed by illicit trafficking in psychotropic substances/drugs abuse (8 Member States), money laundering and theft (5 Member States each).

According to Member States, the most frequently requested type of assistance were hearing of witnesses (also statements in writing) (11 Member States), followed by obtaining of information on bank accounts (7 Member States), hearing of suspects or accused person as well as obtaining of information relating to natural persons, in particular the alleged perpetrator (including identification and obtaining copy of the records) (5 Member States each).

Japan indicates that the most frequent requests are made for taking statements of witnesses or suspects (65 cases in 5 years), serving document (27 cases), bank records (23 cases), judicial documents (20) and taking testimonies (18).

The time of execution of requests by Japan ranges from 1 month to 2 years, with an average of 8 months. Member States also indicated that requests have been refused only in very few cases.

Transmission of requests takes place more and more by direct transmission based on the Agreement but diplomatic channels are still in use, in one urgent case the Interpol channel has been used.

### 3. Member States as requested State

15 Member States received requests from Japanese competent authorities following the entry into force of the Agreement. Luxembourg was the Member States which received the highest number of requests from Japan (37), followed by France (13) and Germany (around 10 cases). In other Member States, the number of requests received from Japan since January 2011 has been lower than 10. Requests mainly concerned fraud, money laundering, drug trafficking, cybercrime and corruption, and the type of assistance required mainly covered obtaining criminal records, obtaining electronic evidence, bank or credit card data, but also hearing of witnesses.

EU Member States have carried out the requested measures within a range of between 2 weeks and a year, with an average duration 5-6 months. Refusals of request are rare. The main reasons for requests being refused lie in the different legal systems of Japan and EU Member States.

### **IV. Specific features of criminal procedure and of MLA procedures in Japan**

A key to successful mutual legal assistance is the understanding of the specificities of the legal system of the requested State. During the EU-Japan Day, Japanese practitioners presented specific features of the Japanese legal system and the mechanism for dealing with mutual legal assistance requests.

## 1. Main steps of the criminal procedure

Usually the police launch an investigation in Japan (by interviewing suspects etc.) and subsequently send the case to the public prosecutor, who checks whether there is sufficient evidence, and can request additional evidence. Warrants issued by judges are necessary in certain cases, but otherwise the judge is not involved in the investigation. The investigation is subject to very short, strict time limits: usually a maximum of 23 days after the arrest of the suspect. Japan has an adversarial system meaning that the judge has information only of the basic elements of a case when the trial starts; the prosecutor plays a very important role during the procedure.

The Japanese criminal code is similar to the European continental ones while the criminal procedural code is inspired from the U.S. code. Where a warrant is required, the concept of "probable cause" applies; it is similar to the one that the U.S.A. requires for MLA cases. In order to get a warrant it needs to be proven that there has been a crime, that a person committed the crime and that the evidence is probably existent at the place where the search should take place. When a warrant is not needed under Japanese law, these elements are not required.

## 2. Investigative measures in Japan

The major investigative measures in Japan are:

### - *hearing of a witness*<sup>6</sup>

There are two ways of obtaining information from a witness:

- witness interview by a police officer/prosecutor resulting in a document referred to as "statement";
- witness examination at a court by a judge resulting in a document referred to as "testimony".

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<sup>6</sup> More details on witness hearing can be found under Point 5 of the Council doc. 10783/1/16 of 13 July 2016 containing a summary of the replies to the questionnaire on the functioning of the Agreement.

Both documents are admissible as evidence; there is no affidavit in Japan. A witness interview is usually quicker and follows a less strict protocol than a witness examination. Witness examination procedures are more complicated, with more formalities: the venue has to be the Court, the witness takes an oath. The notification of witness rights is only applicable to witness examination.

Domestically, the criminal procedure in Japan starts with a witness interview – written record is taken and signed. For a witness testimony a court permission is required, it is not done during the investigative procedure.

**Features of "interview" and "examination" of witnesses  
in Japanese criminal proceedings**

|  | <b>Interview by a police officer /<br/>prosecutor</b>        | <b>Witness examination by a<br/>judge/court</b>  |
|--|--|--|
| <b>Procedure</b>                           | Invite the witness to the venue<br>and conduct the interview | Submit documents to a<br>judge/court, that decides to hold<br>the witness examination and<br>conducts the examination  |
| <b>Venue</b>                               | Police station, prosecutor's<br>office, etc.                 | Court  |
| <b>Oath</b>                                | Witness does not take an oath                                | Witness takes an oath  |
| <b>Notification of<br/>witness' rights</b> | N/A  | Judge/court informs the witness<br>on the punishment of perjury, and<br>of the right to refuse to testify if it<br>could result in criminal<br>prosecution or in a conviction<br>against the witness or against his<br>or her immediate family-members |



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|--|---|--|
| <b>Presence of counsel during the execution of request</b> | Discretion of the interviewer<br>(rarely exercised) | Discretion of the judge/court                            |
| <b>Estimated time of execution of request</b>              | Considerably quicker than a witness examination     | In general, takes more time than conducting an interview |

- ***interview of a suspect***: the suspect has the right to remain silent and may appoint a counsel at any time.
- ***obtaining items, including search and seizure*** in a coercive way (need judicially issued warrant) or non-coercive way (voluntarily).
- ***obtaining bank records***: generally obtained voluntarily
- ***examining persons, items and places***: when taking coercive measures, an inspection warrant is necessary.

Other special investigation techniques are used in Japan but as they are not listed in the Agreement, they cannot be executed as part of an MLA request. These are:

- wiretapping,
- controlled delivery (live or clean controlled delivery),
- Joint Investigation Team ('JIT') - only parallel investigation by Japan is feasible.

### 3. Scope of assistance by Japan under the MLA Agreement

#### a) *Taking testimony or statement from a witness*

Both measures are possible under the agreement, but the interview of a witness is considerably faster than the examination of a witness. Member States should specify which type of measure they want assistance on. If it is not clear from an MLA request, Japan assumes that the requesting State's intention is to conduct an interview. In order to execute the request successfully, necessary information on the identity and the location of the person and a list of questions should be provided by the requesting State (cf. Article 8 (4) b)).

Japanese law does not provide for the presence of the attorney of the suspect, it only provides that the witness examination takes place at the discretion of the judge. If the procedure under the law of the requesting State requires that the hearing of a witness takes place with the suspect's attorney present, this will probably be easier in the framework of the witness examination; the judge could make arrangements for it. The judge can also allow for the presence of a foreign investigator during the witness examination.

The notification of witnesses' right will be done in accordance with Japanese law (Article 10 (2) of the Agreement); Japan can inform a witness about its rights under Member States' legal systems only to the extent it is not contrary to Japanese law. When receiving a request that contains reference to the rights of a witness - which can be quite broad under the relevant EU acquis -, the Japan authorities will analyse them in order to assess if there are similar witness rights in Japan.

It is important to keep in mind that the person in charge of executing the request does not necessarily have sufficient knowledge of the legal system of the requesting State and of the case. Requests should be sufficiently detailed; otherwise evidence might not satisfy the MLA request. For example, a list of questions that can be used during the interview (Article 8 (4) b)) should be provided (e.g. "Please describe in details how you opened this bank account. Did you open this account? What do you use it for? Please explain these transactions.").

*b) Interview/examination of a witness by videoconference*

Hearing of a witness by videoconference is not permitted under domestic law for national procedures, not even for witness interviews; the witness must be present in the court room. It takes time to organise an interview/witness examination by videoconference as neither courts nor the Ministry of Justice possess videoconferencing equipment. If it is acceptable to the requesting State that the video conference of a witness under an MLA request does not take place in a court or in the prosecutor's office but in a lawyer's office, arrangements can be made more easily.

*c) Obtaining items*

Information should be provided to justify coercive measures, in accordance with the "probable cause" requirement. Japan has a centralised system to register property assets (real estate) through which owners can be identified.

#### *d) Confiscation of assets*

There is no national central authority for confiscation. Confiscation is considered as a secondary tool, a penalty, it always requires a conviction. What is not in possession of the investigator or of the judge cannot be confiscated. Therefore, seizure needs to take place first. A court order/judicial decision is taken as a basis for execution in Japan, both for seizure and confiscation; asset sharing might follow later. It is much quicker to use Interpol to freeze a bank account in Japan.

#### *e) Bank records*

An account number is not enough to identify the account. Information should include the name or number of the branch and information on the remittee. If a transfer paper is available, it could be added to the request, as well as information to prove that the bank account is used for the crime. It helps to provide personal data (e.g. date of birth) of the person concerned in order to identify her/him. Japan does not have a central register of bank accounts, each bank is requested individually to provide information whether that person has a bank account there. Generally banks agree to provide information on bank records voluntarily, the account holder is not notified about it

### 4. MLA procedures for requests to Japan

#### *a) General requirements*

The **central authority** responsible for MLA in Japan is the International Affairs Division, Criminal Affairs Bureau in the Ministry of Justice. In addition, the National Police Agency may also send requests (but not receive foreign requests).

Before the Agreement came into force the Ministry of Foreign Affairs was the competent authority and time-consuming traditional diplomatic channels were used for MLA requests. Today, direct contact between central authorities is in place, and diplomatic channels should no longer be used. A distinction needs to be made between the central authority (Article 4 and Annex I)<sup>7</sup> and the competent authorities (Article 6 and Annex II)<sup>8</sup>. Japan accepts a MLA request only if it comes from the central authority of the requesting State, otherwise the request is sent back, which causes delay.

Staff in the Japanese central authority has a prosecutorial background. The central authority is in contact directly with the prosecutor for execution of the MLA and coordinates with the National Police Agency for execution by the police. The central authority is responsible for examining legal restrictions and appropriateness (e.g. Article 11 grounds for refusal, cases concerning a political offence).

Japan requests dual criminality: the criminal offence underlying the request for assistance must be a crime in both the requesting and the requested State. It is required only when coercive measures are necessary. This is assessed on the basis of the underlying facts, not of the name of the offence. It is therefore important that the requesting State provides sufficient details, including on underlying facts and constituent elements.

*b) Specific cases*

In *tax cases* a warrant is required in order to get access to Japanese tax payers records. The central authority for MLA requests works closely with the tax agency that carries out the relevant investigation. If it is not a tax case, a warrant is needed to obtain a tax record – Japan needs to know from the MLA request what the tax record is needed for.

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<sup>7</sup> Central Authority 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.

<sup>8</sup> Competent authorities under the laws of the States are entitled to originate requests for assistance pursuant to the Agreement

**Electronic evidence:** Japan and most EU Member States are party to the Council of Europe Cybercrime Convention (ETS No.185). Japan could give a requesting Member State all the help that is given domestically, except for wiretapping (not listed in the MLA Agreement, does not fall under the Cybercrime Convention either). Japan does not have specific data retention laws for phone calls, the length of retaining content and traffic data depends on the provider. An individual request needs to be made to a provider to retain data for a certain period of time.

## **V. Good Practices and Recommendations for Improving the Practical Functioning of the Agreement**

There is a consensus between EU Member States and Japan that the Agreement adds value to the EU-Japan MLA relationship and generally works well. The Agreement is used, and a good spirit of cooperation has been established on both sides.

All parties to the Agreement alike consider that the functioning of the Agreement could still be improved based on best practices and 'lessons learned', in particular in view of the increasing number of requests. Challenges identified by participants include the duration of MLA procedures and the mismatch of legal systems and legal tests.

Concrete solutions for enhancing the practice under the agreement have been identified and are presented below.

### **1. Good practices**

Member States particularly welcomed the following good practices in judicial cooperation when Japan is acting as a requested State:

- confirmation of receipt of the request immediately in English via e-mail;
- cover note to a request accepted in English;

- direct contact via e-mail with person dealing with the request;
- further correspondence and communication in English via e-mail;
- being informed about the method of execution of the request by Japanese authorities;
- use of spontaneous exchange of information;
- quickly and thoroughly responding to questions;
- good use of police to police cooperation.

Member States also welcomed the practice of Japan to send individual prosecutors annually for a study visit to the EU (Eurojust, EJM, Belgium, European Commission) on a certain topic for mutual exchange of information

When Japan is acting as a requesting State, Member States welcomed:

- well structured requests, containing all the necessary information,
- following the published UK MLA guidelines or other guidelines of certain Member States when issuing requests.

Japan particularly welcomed the following good practices when Member States are acting as requesting State:

- submitting draft requests to the relevant Japanese Embassy before translating and sending it to Japan in order to verify the language, for guidance on legal issues;
- use of liaison prosecutors/officers, Eurojust, EJM contact points (facilitator of cooperation).

The involvement of Eurojust and EJM in mutual legal assistance cases was also mentioned as an example of good practice:

## Involvement of Eurojust

To date, there is no cooperation agreement between Eurojust and Japan. Cooperation is nevertheless possible to a limited extent: cooperation has been facilitated by Eurojust on a case-by-case basis by way of a decision of the College if an essential interest in providing assistance is demonstrated (e.g. facilitating the execution of MLA and extradition requests without the possibility to exchange operational information, including personal data).

Eurojust's cooperation with third States is also possible through Eurojust's worldwide network of contact points. Involvement of Eurojust's contact points does not provide for the possibility to exchange operational information. A Japan contact point has been established in 2011. It has not been used frequently - only 9 cases since 2011 were supported by Eurojust.

## Involvement of the European Judicial Network ('EJN') contact points

Japan has designated two contact points for the cooperation with EJN. One of the Contact Points is based in Brussels<sup>9</sup>. If a Member State practitioner is in need of facilitation in a given case he/she can contact one of the EJN Contact Points. EJN has recently developed a Compendium that could help in drafting a request on mutual assistance. The tool could eventually be used as well by Japan. It is available in all EU languages except for Gaelic. The EJN website will contain information on the Japanese legal system in the near future.

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<sup>9</sup> Contact details are available on EJN website.



## 2. Areas for improvement and recommendations

Areas for improvement and recommendations were discussed by participants. Some of the recommendations listed below are of an easy nature (e.g. channels of cooperation), others are more difficult to put in place (e.g. dealing with differences in procedural rights aspects). Nevertheless, it is clear from the discussion held at the EU-Japan Day that both sides are committed to work on a more efficient use of the Agreement.

### *a) General recommendations for all actors*

- *contact details*: regular updates of central authorities needs to take place; in the request, the responsible authority should be mentioned with contact details;
- *positive working relationship* based on direct personal contacts between central authorities and contact persons are key; these should be fostered.
- improve the use of *modern communication channels*, including modern technologies such as video links and webinars (communication via post is still very slow);
- *confirm receipt of the request* directly after its delivery, indicate its reference number in the national system and identify a contact person for relevant communication; this will simplify the subsequent process and make it more transparent;
- *aim to shorten the length of the execution of requests* (varies from few weeks to several months, on both sides; execution over a year is considered too long). This could be due to translation problems, internal Japanese procedures, not correctly addressing the additional specific questions Japan requires, communication issues. All requests needs to be dealt with and responded to, even in case of non-execution for any reason, and all requests for additional information have to be handled;

- *developing the expertise of personnel in both EU Member States and in Japan*: increasing the speed and number of successfully executed requests could be promoted by advocating that personnel in Member States central authorities become familiar with Japanese legal standards and provide guidance to requesting officials before submitting requests and communicating directly with the Japanese central authority to facilitate rapid obtaining of any additional information necessary to execute a request;
- possibility to provide *information on requests related to other countries* (information on the existence of such requests);
- *develop and/or use practical tools*: e.g. existing guidance in different countries (e.g. UK, Ireland) to draft or execute MLA requests should be taken into account, as well as existing EJM tools.

*b) Recommendations when Member States act as requesting State /Japan acts as requested State*

- make use of *informal means of preparation, prior consultation* before the request is made should take place:
  - in Japan – Ministry of Justice as central authority (contact: [cabiad@moj.go.jp](mailto:cabiad@moj.go.jp)),
  - for the UK, France and Germany – consult legal attaché,
  - for other EU Member States – Mission of Japan to the EU based in Brussels/Belgium (current contact: [yusuke.kitamura@mofa.go.jp](mailto:yusuke.kitamura@mofa.go.jp));
- due to the differences in the legal systems certain *procedural rights* (e.g. presence of lawyer, instruction of rights of the person, signing of protocol from hearing by a person interviewed, testifying under oath) are handled differently. Provide details on real needs and provide relevant law/ information on legal system, *including applicable penalties* (Article 8 (3) d));
- there is a need for the possibility of *use of special investigative technique* – MLA does not provide for them. Japan is an Interpol member. The National Police Agency facilitates intelligence exchange. MLA is required when coercive powers are required.
- Make use of *Joint Investigation Teams (JIT)*

EU Member States, Europol and Eurojust can join a JIT as participants but there is an absence of legal basis for Japan to join a JIT as of today. Arrangements are made on a case-by-case basis, which takes time and administrative effort.

In the past, a JIT has been set up between 3 Member States (Belgium, France and UK) and Japan. In the absence of legal basis for Japan to join the JIT the following procedure was used: one of the participating Member States, Belgium, sent a letter of request to Japan to join the JIT. Letters of request from Japan to Belgium were done quickly thanks to informal channels and contacts between the Belgian desk at Eurojust and the Japanese prosecutor at the Mission of Japan to the EU in Brussels. The JIT agreement included a provision that travel could be funded. Japan could share evidence obtained during the JIT with third states that were not part of the JIT.

In the future there might be more cases where JITs would be useful. As long as Japan has jurisdiction, it can carry out its own investigation. In the absence of jurisdiction, the only basis would be a MLA request. In the field of a JIT, Japan assumes to have jurisdiction. As the MLA Agreement is silent about JITs, it is not clear what is the form of cooperation (e.g. an MLA request would be needed for actions).

Possible legal basis for Japan to join the JIT discussed by participants are:

1. UN Palermo Convention could be used to establish JITs with third countries, but ratification is ongoing - thus, this option is not appropriate.
2. Council of Europe Second Protocol to 1959 European Convention on Mutual assistance in criminal matters – this would provide a legal basis for Japan to be able to set up JITs with 22 EU Member States, 11 non-EU Member States and two non-European States. This can be a possibility for the future, if Japan is ready to ratify this instrument.
3. Amending the EU-Japan MLA Agreement – the example of Article 5 EU-US MLA Agreement could be used.

Regarding the financing of the JIT: it is now possible for Eurojust to finance a JIT with third countries, when the third country is involved in the JIT.

- provide detailed information when serving documents or obtaining records of a bank account are requested (Article 8 (3) d) g): *the identity or location of a person to be served and the name or the number of the branch of the bank and information on the remittee;*
- in case of hearing of a person, requests shall include a *list of questions to be asked* to the person from whom testimony or statement are sought (Article 8 (4) b));
- it needs to be made sufficiently clear why it is necessary to execute the MLA request in question: *provide facts about the case and about the aim of the investigation* (e.g. what is the case about, why are you investigating: you do x to investigate y; why is it important?);
- in order to establish the existence of the essential elements for the 'probable cause' test, *evidence from the file* could be used, or at least, the request should contain sufficient information that would allow the judge in Japan to think that whatever is in the request it is backed by certain evidential documents (e.g. statements) in the requesting country;
- *quality of translation* – a Japanese translation of the request of sufficient quality must be attached (Article 9). Submitting a request for assistance in English is acceptable only in justified urgent cases (reasons for urgency needs to be clearly provided, such as "a concrete and imminent danger that the valuable evidence will be disappeared and lost forever"). The courts in Japan accept only Japanese documents. On the one hand, translations into Japanese are often incomprehensible (Google translate), on the other hand, it is very hard for EU prosecutors to verify a certified translation in Japan. It is advised to attach an English version of the request as a supplement to the Japanese translation (but not as a substitute). A cover letter to the MLA request in English is accepted by Japan. Best is to refer to the local Japanese legal attaché based in a Member State, who is familiar with both legal systems. The Legal attaché can work as a coordinator for both countries, facilitates communication.

- communication problems can easily arise (geographical distance, different time zones): *using regional attaches for communication is advisable*. Their background is always that of a prosecutor, they have extensive knowledge, ongoing cases can also be discussed.

## **VI. Conclusion**

The EU-Japan Day was the first meeting among practitioners from both sides to exchange information on the EU-Japan MLA, and was considered as very useful by all practitioners present. The present report aims to summarise the information shared during the meeting. It should be further distributed in the Member States. It was also concluded that further meetings would be useful in the future to continue the exchange of information on best practices. In the meantime, the contact points on both sides should be more frequently involved by practitioners.