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**A7-0209/2010**

25.6.2010

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## **RECOMMENDATION**

on the draft Council decision on the conclusion of the Agreement between the European Union and Japan on mutual legal assistance in criminal matters (05308/2010 – C7-0029/2010 – 2009/0188(NLE))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Salvatore Iacolino

***Symbols for procedures***

- \* Consultation procedure
- \*\*\* Consent procedure
- \*\*\*I Ordinary legislative procedure (first reading)
- \*\*\*II Ordinary legislative procedure (second reading)
- \*\*\*III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

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## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the draft Council decision on the conclusion of the Agreement between the European Union and Japan on mutual legal assistance in criminal matters  
(05308/2010 – C7-0029/2010 – 2009/0188(NLE))**

**(Consent)**

*The European Parliament,*

- having regard to the draft agreement between the European Union and Japan on mutual legal assistance in criminal matters (15915/2009),
  - having regard to the draft Council decision (05308/2010),– having regard to Article 82(1), second subparagraph, point (d) and Article 218(6), second subparagraph, point (a), of the Treaty on the Functioning of the European Union,
  - having regard to Rules 81 and 90(8) of its Rules of Procedure,
  - having regard to the recommendation of the Committee on Civil Liberties, Justice and Home Affairs (A7-0209/2010),
1. Consents to conclusion of the agreement;
  2. Instructs its President to forward its position to the Council, the Commission and the governments and parliaments of the Member States and Japan.

## EXPLANATORY STATEMENT

### 1. Background to the Agreement

The globalisation which characterises the times in which we live is apparent in all sectors of daily life, including crime.

The statistics on legal cooperation procedures in criminal matters between the individual Member States and Japan show that despite the absence of a legal framework, the European and Japanese legal authorities are obliged to cooperate with each other.

In February 2009, noting the absence of bilateral treaties between the Member States of the European Union and Japan and realising the benefits of a harmonious and coherent legal framework, the Council authorised the opening of negotiations on the conclusion of an Agreement on legal assistance in criminal matters between the European Union and Japan.

The Council authorised the signing of this Agreement by decision of 30 November 2009 on the basis of Articles 24 and 38 of the Treaty on European Union. Following the entry into force of the Lisbon Treaty, Parliament has been asked to give its consent, as provided for in Article 218 of the Treaty on the Functioning of the European Union.

### 2. Scope of the Agreement

The Agreement is modelled on other legal cooperation agreements previously concluded and concerns in particular cooperation in the conduct of enquiries or the acquisition of evidence, as well as other activities, such as the notification of communications in the requested country.

The Agreement's most important provisions include taking testimony or statements, enabling hearings to be held by video-conference, obtaining records, documents or bank statements, locating or identifying persons, and the production of the items in the possession of the legislative, administrative or judicial authorities of the requested State or its local authorities.

The Agreement also contains procedures for the notification of documents and information concerning invitations to appear in the requesting Member State and the temporary transfer of a person in custody for testimony or other evidentiary purposes.

There are specific provisions governing the freezing or seizure and confiscation of proceeds or instrumentalities.

Lastly, a final clause allows the parties to provide each other with any kind of assistance permitted by the laws of the requested State and agreed between a Member State and Japan.

Legal assistance may be provided through a formal request or through a spontaneous exchange of information. In the latter case, restrictions may be placed on the use of the information provided.

Requests for legal assistance are to be executed in accordance with the laws of the requested State, although specific procedures may be agreed upon. If the execution of a request poses a practical problem for the requested State, provision is made for that State to consult with the requesting State in order to resolve the matter. If, however, the execution of a request interferes with national proceedings, the requested State may postpone execution.

With regard to grounds for refusal, in addition to the 'traditional' grounds such as political offences, the *ne bis in idem* principle, manipulation of requests for discriminatory purposes and requests likely to prejudice the sovereignty, security, public order or other essential interests of the requested State, it is worth noting the importance of the provision protecting the Member States from possible use of the Agreement in the case of proceedings for offences punishable by the death penalty.

In particular, in line with the position frequently stated by the European Union calling for abolition of the death penalty or at least a moratorium on its use, the Agreement stipulates that the requested State may consider that the execution of a request concerning an offence punishable by death could prejudice its essential interests and may therefore be refused. Nevertheless, the possibility remains for the requested State to accept the cooperation request if it is able to agree with the requesting State on the conditions under which the request can be executed.

Lastly, provision is made for compliance with the principle of dual criminal liability in cases where coercive measures are necessary.

In the interests of fair cooperation, the states concerned must consult with each other before refusing assistance.

Among the many guarantees contained in the Agreement is a stipulation that requests must be accompanied by a translation of the document into a language understood by the recipient.

Article 11(3) of the Agreement stipulates that assistance may not be refused on the grounds of bank secrecy. Your rapporteur believes that in future this requirement could be extended to include professional secrecy, which could be invoked as grounds by lawyers or members of the regulated legal professions. Nevertheless, respect for professional secrecy should not be maintained if it covers manifestly criminal activities.

With regard to obtaining information on bank accounts, the taking of testimony or statements and the acquiring of evidence, any coercive measures, including search and seizure, may be taken by the requested State if they appear justified under its laws. These provisions appear to be underpinned by satisfactory procedural guarantees.

As for questions relating to the production of evidence, the handing over of documents, the freezing or seizure and confiscation of proceeds or instrumentalities, the requested State is required to provide assistance to the requesting State to the same extent and under the same conditions as would be available to its own investigative authorities and thus to the extent permitted by its own laws. There therefore appear to be adequate safeguards for the parties to the Agreement.

There is nothing to prevent the parties to the present Agreement from engaging in parallel in

activities relating to the same criminal matter in accordance with other international agreements or from concluding agreements which confirm, supplement, extend or amplify the provisions of this Agreement.

### **3. Conclusions**

The provisions contained in the Agreement are designed to provide legal assistance that is as effective as possible and capable of addressing the daily challenges which may arise, while ensuring appropriate safeguards.

In conclusion, the standards of protection provided by this Agreement appear to be higher than those provided in similar agreements, including some concluded recently.

In the light of the above, there are no specific grounds for opposing the adoption of the Agreement.



## RESULT OF FINAL VOTE IN COMMITTEE

<b>Date adopted</b>	23.6.2010
<b>Result of final vote</b>	+: 40 -: 2 0: 0
<b>Members present for the final vote</b>	Roberta Angelilli, Gerard Batten, Mario Borghezio, Simon Busuttil, Carlos Coelho, Cornelis de Jong, Agustín Díaz de Mera García Consuegra, Tanja Fajon, Kinga Gál, Nathalie Griesbeck, Sylvie Guillaume, Ágnes Hankiss, Anna Hedh, Salvatore Iacolino, Sophia in 't Veld, Livia Járóka, Teresa Jiménez-Becerril Barrio, Timothy Kirkhope, Juan Fernando López Aguilar, Clemente Mastella, Louis Michel, Claude Moraes, Georgios Papanikolaou, Judith Sargentini, Birgit Sippel, Csaba Sógor, Renate Sommer, Rui Tavares, Wim van de Camp, Axel Voss, Manfred Weber, Tatjana Ždanoka
<b>Substitute(s) present for the final vote</b>	Alexander Alvaro, Edit Bauer, Andrew Henry William Brons, Anna Maria Corazza Bildt, Ioan Enciu, Nadja Hirsch, Franziska Keller, Petru Constantin Luhan, Mariya Nedelcheva, Kyriacos Triantaphyllides