



Council of the
European Union

Brussels, 13 July 2016
(OR. en)

10783/1/16
REV 1

LIMITE

COPEN 226
EJN 46
EUROJUST 91
COASI 147

NOTE

| | |
|-----------------|--|
| From: | General Secretariat of the Council |
| To: | Delegations |
| No. prev. doc.: | 6935/16 |
| Subject: | EU-Japan Mutual Legal Assistance Agreement - Summary of replies to the questionnaire on the application of the 2009 EU-Japan Agreement on Mutual Legal Assistance |

On 14 March 2016, the Slovak delegation submitted doc. 6935/16, containing a questionnaire on the application of the 2009 EU-Japan Agreement on Mutual Legal Assistance (OJ L 39, 12.2.2010, p. 20).

25 Member States provided a reply to the General Secretariat (BE, BG, CZ, DE, EL, ES, EE, FR, HR, IE, IT, CY, LV, LT, LU, HU, NL, AT, PL, PT, SK, SI, FI, SE, UK).

A summary of the replies provided is set out in the Annex. Please note that IE indicated that it had no experience with the application of the Agreement, neither as requesting State nor as requested State.

SUMMARY OF REPLIES**1. Experience of Member States as *requesting States***

- a. How many MLA requests have the competent authorities of your Member State sent to Japan following the entry into force of the EU-Japan MLA agreement in January 2011?
- b. Were the requests from your Member State sent directly to the Ministry of Justice in Japan or through diplomatic channels?

| Member State | Nr. | Way of sending |
|----------------|----------------|---|
| Austria | 6 | Diplomatic channels (2) ¹ and direct transmission (4) |
| Belgium | 8 | Diplomatic channels (1, first) and direct transmission (subsequent 7) |
| Bulgaria | 11 | Direct transmission |
| Croatia | 1 | Diplomatic channels, but on request of Japan it was resent by direct transmission to MoJ in Japan |
| Cyprus | 0 | |
| Czech Republic | 9 ² | Direct transmission |
| Estonia | 0 | |
| Finland | 4 | Direct transmission |
| France | 15 | Direct transmission |
| Germany | +/-10 | Direct transmission ³ |
| Greece | 3 | Diplomatic channels (2) and direct transmission (1) |
| Hungary | 9 | Diplomatic channels (3) and direct transmission (6) |
| Italy | 2 | Direct transmission |
| Lithuania | 0 | |
| Luxembourg | 2 | Diplomatic channels (1, 2014) and direct transmission (1, 2015) |
| Netherlands | 11 | First requests: diplomatic channels. After a letter from the MoJ in Japan of December 2013, requests were sent by direct transmission |
| Poland | 15 | First 5 requests by diplomatic channels, but subsequently other requests by direct transmission |
| Portugal | 5 | Diplomatic channels: 2 in 2011, 3 in 2012 |
| Slovakia | 3 | Direct transmission |
| Slovenia | 1 | Diplomatic channels and Interpol (urgent matter) |
| Spain | 19 | Direct transmission |
| Sweden | 2 | Direct transmission |
| United Kingdom | 7 | Direct transmission |

¹ In case of diplomatic transmission, Japan stated that direct transmission would be necessary.

² In 7 cases; in 2 cases an additional request was sent.

³ Germany has established the practice of submitting draft requests to the Japanese Embassy for guidance, before sending them to Japan.

- c. What type of assistance did your requests concern? Please specify also, if possible, the offences concerned.

| Type of assistance | Member State(s) that made the request for the assistance |
|--|---|
| Hearing of suspects or accused persons (also statements in writing) | BE, BG, EL, FR, UK |
| Hearing of witnesses (also statements in writing) | AT, BE, BG, CZ, EL, FR, NL, PL, PT, SK, UK |
| Hearing of victims | CZ, IT, FR, SE |
| Notification / service of documents, including letters | CZ, ES, HR, HU |
| Obtaining of copies of documents (e.g. from a criminal file) | BE, CZ, NL |
| Obtaining of information relating to natural persons, in particular the alleged perpetrator (including identification and obtaining copy of the records) | BE, ES, FR, IT, SK |
| Obtaining of information relating to legal persons (including identification and obtaining copy of the records) | AT, BE, ES, PL |
| Obtaining of information on bank accounts | AT, CZ, IT, NL, PT, SK, UK |
| Identification and localisation of Japanese telephone numbers | BE |
| Verification / comparison finger prints | BE |
| Interception of telecommunication | SE |
| Search and seizure | BE, FR, SE |
| Check if suspects or accused persons have gone to Japan | BE |
| Obtaining information on criminal proceedings | PL, UK |
| IP logs / disclosure of IP address user data / Obtaining computer data | BE, EL, SI |

| Offences to which the request related | Member State(s) concerned |
|--|--|
| Terrorism | BE |
| Illicit trafficking in psychotropic substances / drugs abuse | BE, CZ, DE, ES, HU, PL, FI, UK |
| Fraud, including internet fraud (cyber crime) and fiscal fraud, swindle, forgery of documents and use of false documents | AT, BE, CZ, DE, EL, ES, FR, IT, LU, NL, PL, SE, SK, FI, UK |
| Participation in a criminal organisation | BE |
| Trafficking in human beings | PL |
| Murder | BE, FR, UK |
| Accidental injury | FR |
| Negligent public menace (causing a traffic accident) | CZ |
| Child pornography | ES |
| Rape (non-consensual sexual intercourse) | FR, HR, UK |
| Child abduction | ES, FR |
| Money laundering | EL, LU, PL, FI, UK |
| Attack on information system, including breach of electronic data confidentiality | SI |
| Robbery | ES, IT, NL |
| Theft, including unlawful appropriation | EL, FR, HU, PL, UK |
| Receipt of stolen goods | FR |
| Infringement of copyright | CZ, FI |
| Disloyalty to principal | SE |
| Acting to the detriment of a company | PL |
| Neglect of compulsory maintenance | SK |

- d. How long did it take to comply with your request or to receive an answer to your request?

| Member State | Time that it took to receive an answer from the Japanese authorities |
|----------------|---|
| Austria | Between 3 months – 1,5 years. However, if a request could not be executed, (e.g. due to an invalid bank account number) a reply was given within two months. |
| Belgium | On average 7 months |
| Bulgaria | Between 3 months - 1 year |
| Croatia | 9 months |
| Czech Republic | Between 3 months – 1 year |
| Finland | Between 3 months – 1 year |
| France | Between 8 – 12 months |
| Germany | Time frame is dependent on the individual case and measures requested |
| Greece | Between 1 month - 1 year. In one case, the Japanese MoJ sent an e-mail asking for further information after four months; after another four months, it sent an e-mail on non-execution, while the formal reply was received after one year. In another case a formal letter was received after one month. |
| Hungary | Between 3 months – 1,5 years |
| Italy | In one case it took 5 months, in one case one year and 5 months |
| Luxembourg | Between 8 – 22 months |
| Malta | |
| Netherlands | Between few months – 1 year |
| Poland | Between 1 month and 2 years |
| Portugal | Average 9 months |
| Romania | |
| Slovakia | 9 – 10 months. No reply has yet been received to the 2015 request. |
| Slovenia | Request was sent in July 2015 – no reply yet received (May 2016) |
| Spain | 7 months on average |
| Sweden | 4 months |
| United Kingdom | Two requests were resolved within 2 months, one took 8 months, and the others are ongoing |

- e. In which language was the request formulated? Did the competent authorities of your Member State experience any language problems in the course of the procedure?

| Member State | Language of request | Problems |
|----------------|--|--|
| | | |
| Austria | Japanese | No |
| Belgium | Japanese | No |
| Bulgaria | Japanese (replies in English) | No |
| Croatia | Japanese | No |
| Czech Republic | Japanese, and English in one urgent case | No |
| Finland | Japanese | No |
| France | Japanese | No |
| Germany | Japanese | No |
| Greece | English | The requests were translated in English, since the translation service of the Greek Ministry of Foreign Affairs does not offer translation services in the Japanese language. Japanese MoJ replied that a) they can receive MLA requests in English in urgent cases only, which should be established by providing sufficient reasons; and b) Greece should bear all the translation costs and submit an assurance of payment. |
| Hungary | Japanese | The documents indicating the requested services were translated into Japanese, the requests itself were written in English. Both the Embassy of Japan in Budapest and the Ministry of Justice in Japan indicated that the requests themselves should be furnished with Japanese translation, as well. |
| Italy | Japanese in one case, English in another (urgent) case | No. Japan accepted the English because of urgency and reciprocity |
| Luxembourg | English in both cases | No |
| Netherlands | Japanese | No |
| Poland | Japanese (14) and English (1) | No |
| Portugal | Japanese | No |
| Slovakia | Japanese (other communication in English) | No |
| Slovenia | English | No (but no answer yet) |
| Spain | Japanese | Sometimes it is difficult to ensure good translations. |
| Sweden | One Japanese, one English | No |
| United Kingdom | English in all cases | No |

- f. Have the competent authorities of your Member State requested hearing by videoconference? Have the requests been executed? Please describe the experience including, where appropriate, details of the case, the laws applied for the hearing, problems due to time difference or language and any other issues you consider informative.

The Netherlands indicated that they have asked Japan for a hearing by videoconference. However, this has not (yet) lead to an actual hearing by videoconference. The Netherlands asked Japan for the hearing of a witness by videoconference in a street robbery case, in which the victim was a Japanese national. The Dutch examining magistrate wanted to hear the victim as a witness, by video conference. In a letter in reply to this request, the Japanese authorities asked if the request could be changed to another form of hearing, for example by Japanese authorities, or inviting the witness to be interviewed in the Netherlands. If the Netherlands would not be able to change this request, Japanese authorities asked for detailed reasons as to why videoconference would be necessary. The request was then withdrawn by the Dutch authorities, as a different form of hearing was not an option for the examining magistrate considering the approaching court date.

Spain said that their competent authorities have requested a hearing by videoconference and that it is on progress.

The other Member States replied that their competent authorities have not (yet) requested a hearing by videoconference.

- g. Have the competent authorities of your Member State requested records, documents or reports of bank accounts? If yes, was the request executed? If it was not executed, what was the reason?

| Member State | Requests of bank accounts? Executed? If not, reason? |
|---------------------|--|
| Austria | In three cases the requested bank information was provided. In two cases requests could not be executed since it appeared that the Austrian indications concerning bank account or credit card numbers were false. |
| Belgium | N/A |
| Bulgaria | No |
| Croatia | Yes, the request was executed. |
| Czech Republic | Yes, the request was executed. |
| Finland | Yes, the request was executed. |
| France | Yes, the request was executed. |
| Germany | No |
| Greece | In one case IP address data were requested. The request was not executed on the ground that the IP address no longer existed. |
| Hungary | N/A |
| Italy | Yes, the request was executed. |
| Luxembourg | No |
| Netherlands | Yes, the request was executed. |
| Poland | No |
| Portugal | Yes, twice, executed. |
| Slovakia | Yes, the request was executed. |
| Slovenia | No |
| Spain | Yes, the request was executed. |
| Sweden | N/A |
| United Kingdom | No |

- h. Have the competent authorities of Japan refused your requests for any reason? If yes, please indicate the ground for refusal.

The Czech Republic mentioned that the Japanese authorities didn't fully comply with an MLA request because they considered that no reasonable explanation had been provided regarding the need for multiple interviews of victims. The Czech authorities had asked to interview 40 victims, and the authorities of Japan considered that this would be a significant burden. They decided to carry out some interviews, thus executing the request partially.

Greece replied that the Japanese Authorities have never formally refused to execute a request; nevertheless, the "translation issue" (see above point e) could lead to a de-facto non-execution of requests. In one case, the request (disclosure of IP address user data) could not be executed because the internet provider preserved IP addresses for six (6) months only.

Poland responded that in one case the Japanese authorities refused to provide the requested information in part (i.e. provide information whether any other countries requested legal assistance and whether the Japanese authorities conducted proceedings in the case concerned). Japan justified this refusal by data confidentiality.

All other Member States which responded to this question replied that Japan has not refused the execution of any request.⁴

⁴ Hungary noted that while not having formally refused any request, Japan has not responded in 4 cases yet. Slovenia also stated that it hadn't received an answer yet.

- i. Did the competent authorities of your Member State experience any difficulty in cooperating with the Japanese Central authority or any other Japanese authority? If so, please describe.

Most Member States replied that they had not experienced any difficulty (although it was sometimes noted that the experience gained so far is very limited). The following specific comments were provided:

| Member State | Any difficulty? If so, description |
|---------------------|---|
| Bulgaria | Cooperation could be improved concerning the exchange of information about the competent authority or the address of a person which is necessary for the MLA request to be correctly formulated. |
| Czech Republic | Following experience has occurred: - the witnesses couldn't be instructed (informed of their rights), according to the law of the requesting State, in Japan; - in case of larger number of victims, the Japanese authorities required a very detailed explanation of necessity of interviews/examination and finally didn't comply with interviews of all of them and executed the request only partially; - the presence of the police investigators were not allowed at the court examination in Japan, while prosecutor and defence lawyers were allowed. |
| France | There is a difficulty with the requirement to respond within two months to requests for additional information from the Japanese authorities in order for the international letter rogatory to be executed. |
| Greece | Translation issue (see above under e) |
| Hungary | While none of the requests were refused, Japan has not responded in 4 cases yet. |
| Netherlands | While requests were not explicitly refused, difficulties were met when requesting the hearing of a witness by means of video-conference (see question f above). In general however, Japanese authorities are very cooperative and are open to direct communication outside of diplomatic channels (for example, by email). |
| Poland | In one case the Japanese authorities have not provided any information about the processing of the request. The said request was sent to Japan in February 2011 through the Ministry of Foreign Affairs in Poland. In April 2013, the Polish authorities were informed that the Ministry of Foreign Affairs in Japan was returning such requests without examination due to the entry into force of the MLA Agreement between the EU and Japan, with a view to sending them directly to the Ministry of Justice in Japan. However, the request in question has never been returned. |

| | |
|----------|---|
| Slovakia | <p>Regarding a hearing of a witness the Slovak Authorities requested to inform the witness of his rights according to the Law of the Slovak Republic and to let him sign each page of the record of his testimony. This procedure was rejected by the competent Authority as an unfeasible procedure according to the Japanese national legislation. After discussions, it was mutually agreed that the interrogation would take place in the presence of the Police Authority and verified by the Prosecutor.</p> <p>In this respect it is useful to add that it was not clear from the delivered document whether that person had been informed of his rights or not, and if so, which information would have been given. The witness did not sign the minutes, which was a consequence of the fact that Japanese legal order does not allow for such procedure. If the interrogated person cannot prove (according to the Japanese national legislation) this action by his/her signature, the procedure and content of the interrogation as well as the information on rights, and its form, has to be verified by the authorized person (Policeman with presence of the Prosecutor or Prosecutor).</p> <p>The communication (also electronic communication) with the Ministry of Justice of Japan was by the way of a very correct nature.</p> |
| Sweden | <p>One request concerned the taking of testimony of the injured party in a criminal court proceeding. Under Swedish Law the injured party does not testify under oath. However, the Japanese Authorities required, with reference to Japanese procedural rules, that the injured party should be heard under oath. The hearing did not take place since the court withdrew its request.</p> |

2. Experience of Member States as requested States

Please answer each of the following questions:

- a. How many requests have the competent authorities of your Member State received from Japan following the entry into force of the EU-Japan MLA agreement in January 2011?
- c. How long did it take you to execute these requests or to send an answer to the Japanese authorities?

| Member State | Nr. requests received | Time to deal with requests |
|----------------|-----------------------|---|
| | | |
| Austria | 2 | 3 months and 5 months |
| Belgium | 2 | 4 months |
| Bulgaria | 0 | |
| Croatia | 0 | |
| Cyprus | 1 | Still pending (received in February 2016) |
| Czech Republic | 2 | 6 months and 11 months |
| Estonia | 1 | 2 weeks |
| Finland | 0 | |
| France | 13 | 8 – 12 months |
| Germany | +/- 10 | "The time frame is dependent on the individual case and the measures requested" |
| Greece | 0 | |
| Hungary | 0 | |
| Italy | 2 | 4,5 months in one case, 8 months in the other |
| Latvia | 1 | 1 month |
| Lithuania | 1 (+ 1 suppl.) | Approx. 1 month |
| Luxembourg | 37 | On average 3,5 months. Shortest 1 month, longest 11 months |
| Netherlands | 4 | Few months |
| Poland | 0 | |
| Portugal | 0 | |
| Slovakia | 0 | |
| Slovenia | 0 | |
| Spain | 1 | 5 months |
| Sweden | 3 | Between 1 and 2 months in total. |
| United Kingdom | 6 | One 3 months, one 5 months, one 8 months - others outstanding |

- b. What type of assistance did these requests concern? Please specify also, if possible, the offences concerned.

| Member State | Offence | Type of assistance required |
|----------------|---|--|
| Austria | Corruption Credit-card fraud | Request for internet-data from an Austrian provider Japan required credit card data |
| Belgium | Illicit trafficking in psychotropic substances | Providing criminal record(s) and judicial decision(s) |
| Cyprus | Fraud | Assistance was asked for company's details and sphere of work. |
| Czech Republic | Unauthorized access to a computer system, distribution of pornography | Electronic evidence – subscriber and transactional records from the Internet Service Provider (ISP) |
| Estonia | | Obtaining information regarding criminal records |
| France | Mainly cybercrime and access and intrusion in connection with an automatic data processing system, but also cases of corruption, child pornography, importation of an illegal product, and theft with violence. | Requests were primarily for identification of IP addresses, tracing, or copies of judgments. |
| Germany | Mainly drugs and fraud | |
| Italy | Computer related crime | Request for information, including electronic data, to identify the suspect. Also hearing of the suspect. |
| Latvia | Bribery | Request for copies of documents relating to the opening of bank accounts. |
| Lithuania | Terrorism | Hearing of witness; seizure of various items and documents; obtaining statements of bank accounts. |
| Luxembourg | Credit-card / Internet payment fraud cases | |
| Netherlands | Money laundering, cyber crime, credit card fraud | Requests for production of documents, information concerning IP address |
| Spain | Drugs | Obtaining information |
| Sweden | Smuggling of narcotics, credit card fraud | Request for taking statements of witnesses, obtaining records of payments, travel records and criminal records |
| United Kingdom | Fraud, money laundering, corruption and maritime offences. | Banking/company information, trace and locate, medical records. |

- d. In which language did you communicate with the Japanese authorities about the request? Did your competent authorities experience any language problems in the course of the procedure?

| Member State | Language used | Any language problems? |
|----------------|--|------------------------|
| | | |
| Austria | German | No |
| Belgium | Requests in French – Communication in English | No |
| Cyprus | English | No |
| Czech Republic | Requests in Czech – Communication in English | No |
| Estonia | English | |
| France | Communication is essentially in English | |
| Germany | Requests in German – Communication in English | No |
| Italy | Italian / English. | No |
| Latvia | English | No |
| Lithuania | Request in Lithuanian – Communication in English | No |
| Luxembourg | English | No |
| Netherlands | Request in Dutch – Communication in English | |
| Spain | Spanish | No |
| Sweden | Swedish | No |
| United Kingdom | English | No |

- e. Have the Japanese authorities requested hearing by videoconference? Has the request been executed and what was your experience? Please describe the experience including, where appropriate, details of the case, the laws applied for the hearing, problems due to time difference or language and any other issues you consider informative.

No Member State has replied positively to this question (meaning there has not been a Japanese request for videoconference).

- f. Have the Japanese authorities requested records, documents or reports of bank accounts? If yes, did you execute the request? If you did not execute the request, what was the reason?

| Member State | Requests? | Execution, reasons for non-execution, if any |
|----------------|---------------|--|
| Austria | Yes, executed | |
| Belgium | N/A | |
| Cyprus | No | |
| Czech Republic | N/A | |
| Estonia | No | |
| France | Yes, executed | |
| Germany | Yes, executed | |
| Italy | No | |
| Latvia | Yes, executed | |
| Lithuania | Yes, executed | |
| Luxembourg | Yes, executed | |
| Netherlands | No | |
| Spain | No | |
| Sweden | Yes, executed | |
| United Kingdom | Yes, executed | |

- g. Have the competent authorities of your Member State received any request concerning an offence punishable by death under the laws of Japan? If yes, did you execute the request? Under what conditions did you execute the request?

No Member State has replied positively to this question (meaning that they have not received a request concerning an offence punishable by death).

- h. Have the competent authorities of your Member State refused any Japanese requests for any reason? If yes, please indicate the ground for refusal.

None of the Member States which responded said that they had refused a Japanese request.

- i. Did the competent authorities of your Member State experience any difficulty concerning the formalities required by Japan? If so, please describe.

Sweden stated that concerning the request for taking a testimony in court, the Japanese prosecutor requested that the witness sign the minutes of the hearing. The Swedish court informed the prosecutor that it was not possible under Swedish law to force the witness to do so. The matter was solved since the witness agreed to sign the minutes voluntarily.

None of the other Member States which responded had (so far) experienced a difficulty concerning the formalities required by Japan.

3. Non-application of Agreement

If your authorities have not yet applied the EU-Japan MLA Agreement, please indicate the reason(s) thereof:

IE answered that no case had occurred yet.

(Question not relevant for the other Member States)

4. Further scope for improving the application of the EU–Japan MLA Agreement

Apart from the information you have provided by answering the above questions, do you see any scope for further improvement of the application of the EU–Japan MLA agreement? If so, which improvement(s) should in your opinion be made, and how do you think these improvements could be realized in practice?

| Member State | Suggestion |
|---------------------|--|
| | |
| Austria | Fostering the personal contacts between the concerned Central Authorities, i.e. Ministries of Justice. |
| Croatia | The communication via post is still very slow; it would be advisable considering other channels to speed up the cooperation. |
| Germany | The involvement of the colleague from the Japanese embassy in Germany in checking the draft texts and discussing ongoing cases is a valuable asset (and possibly a good practice to be recommended to other Member States). |
| Hungary | From a practical point of view, it would be expedient to accept cover notes, requests and other communication between the central authorities in English, without the necessity to translate these into the language of the requested State. |
| Netherlands | Considering the geographical distance between the EU and Japan, the possibility offered by the MLA agreement for hearing a witness by means videoconference would be very useful. Any improvement in this field would be welcome. |
| Slovakia | We propose that the competent Authorities confirm receipt of the request directly after its delivery and indicate the number under which the case will be registered (reference number) and contact for relevant communication. These improvements would simplify the subsequent process and make it more transparent. |

5. Witness interview/examination - Question by the Japanese authorities

In Japan, in order to execute MLA requests asking for obtaining information from a witness, there are two possibilities:

- witness interview by a police officer/prosecutor;
- witness examination at a court by a judge/court.

The result of the interview is called "statement", and the result of the examination is called "testimony", and both of them are admissible as evidence. In Japan there is no affidavit. The features of interview and examination are as set out in the attached table.

The Japanese authorities sometimes receive requests, which miss the description of the manner in which information from a witness is to be obtained.

a) Please indicate if a statement taken through an *interview* by a police officer or prosecutor in Japan as an execution of MLA requests is admissible as evidence in your criminal procedure. If it is not admissible, please provide the reason therefore, and any related provision if applicable.

b) Please also indicate if a testimony taken through a witness *examination* at a court by a judge/court as an execution of MLA requests is admissible as evidence in your criminal procedure. If it is not admissible, please provide the reason therefore, and any related provision if applicable.

| Member State | Reply |
|----------------|---|
| Austria | Both kinds of interrogation produce admissible evidence under Austrian law. |
| Belgium | The evidence in criminal matters is free, provided art. 13 of the Belgian legal aid law is taken into account. ⁵ |
| Cyprus | Both types are admissible as evidence in a Cypriot criminal procedure. |
| Czech Republic | The witness' statement under a) would be admissible only on case by case basis. Such interview could have lower value in case of discrepancy with other evidence. The testimony under b) is admissible as evidence. |
| Finland | Both types are admissible as evidence in a Finnish criminal procedure. |

⁵ Promulgation 9 December 2004 (Belgian Official Journal 24 December 2004). Article 13 stipulates the 'use of evidence gathered abroad':

"The following evidence may not be used as part of criminal proceedings conducted in Belgium:
1° evidence gathered irregularly abroad, where the irregularity:
- ensues, in accordance with the law of the State in which the evidence was gathered, from the violation of a rule of form prescribed on pain of nullity;
- affects the reliability of the evidence;
2° or evidence the use of which violates the right to a fair trial."

| | |
|-------------|---|
| France | If the person is heard simply as a witness, the answer to a) and b) is yes. The interviews are considered lawful. However, if the person is accused or heard as a 'témoin assisté' (a person who is not merely a witness, but to some extent a suspect), for the purposes of a) and b) certain procedural rules must be followed during the hearing in order for it to be lawful. ⁶ |
| Germany | According to German criminal procedure law a witness has to be present at court for a hearing. If that is not possible a record of a hearing by a judge may be used. Records from police authorities are not admitted at court. |
| Greece | Answer to (a) and (b): Greece considers such evidence as admissible for the execution of MLA requests, as long as the execution of the request complies with the provisions of the Japanese legislation. |
| Hungary | As a main rule, statement taken through an interview by a police officer or prosecutor is admissible as evidence. Testimony taken through a witness examination at a court by a judge is always admissible as evidence. |
| Italy | A statement taken through an interview by a police officer or prosecutor in Japan as an execution of MLA requests is admissible as evidence in our criminal procedure, but it can be used in trial only in exceptional cases. A testimony taken through a witness examination at a court by a judge/court as an execution of MLA requests is admissible as evidence in our criminal procedure. |
| Lithuania | Both documents would be admissible as evidence in Lithuanian criminal procedure, given that they are collected in a legitimate way, following the procedure prescribed by the domestic legal acts |
| Luxembourg | Both procedures can provide admissible evidence in Luxembourg courts as long as they are compliant with fundamental rights. |
| Netherlands | Both types of execution of a MLA request would be admissible as evidence in Dutch criminal procedure. |
| Poland | Statement taken through an interview by a police officer or prosecutor in Japan as an execution of an MLA request, in a way described in an accompanying table, in principle would not be admissible as evidence in the Polish criminal procedure. ⁷ Testimony taken through a witness examination at a court by a judge/court in Japan as an execution of MLA requests is admissible as evidence in the Polish criminal procedure. |

⁶ In the case of hearing of a 'témoin assisté', the following rules must be complied with:

- the person must be notified of the charges against him or her before being heard on the substance;
- notice of the hearing or examination must be given to the person's lawyer, or a lawyer must be assigned, and that lawyer must have access to the proceedings;
- the person must NOT be sworn in.

⁷ According to Article 190 of the Polish Code of criminal procedure, before commencing the questioning, the court shall inform the witness of criminal liability for giving false testimony. In the course of investigation, the witness shall sign a statement to the effect that they have been informed of this liability.

Moreover, according to Article 182 of the Code of criminal procedure, the closest relatives, by blood or affinity, of the accused may refuse to testify. According to Article 183 of the same Code a witness may decline to answer a question if such an answer might expose the witness themselves or their closest relatives by blood or affinity to liability for a criminal or fiscal offence.

| | |
|----------|--|
| Portugal | An interview taken by a police officer or a Public Prosecutor, in Japan, can be accepted in Portugal for purposes of the investigation of the case, if the request is presented during the investigation phase of the procedure that, in Portugal, is called “inquérito”. However, if the case moved on to the trial/oral hearing phase, witnesses must be examined by a Judge. |
| Slovakia | Both described methods of interrogation are in principle acceptable. However, serious problems are identified (in the current practice) in relation to the authenticity of the testimony and its compliance with all of the necessary formalities, in particular the rights of the person that is interrogated. ⁸ It would be appropriate and welcomed if the Japanese Judicial Authorities would propose an alternative acceptable by the Japanese national law that would ensure incontestable fact that: 1) The person was duly informed of his/her rights, and the wording of the information given; 2) The content of the testimony as it is recorded in the minutes fully corresponds with the testimony given by the interrogated person. |
| Slovenia | A statement of a witness taken by police is not admissible under the Slovenian criminal law. The testimony taken through a witness examination at a court by a judge/court is admissible as evidence in a criminal procedure. |
| Spain | Both types are admissible. |
| Sweden | In general an interview by a police officer or a prosecutor in Japan will not be allowed as evidence in a Swedish court. The reason is that written depositions are not allowed under Swedish Procedural Law, except for under certain circumstances (for example if the witness is deceased or if the costs and inconveniences of hearing the witness in person are disproportionate to the benefits.) However, an interview by a police officer or a prosecutor may be used under the pre-trial investigation. A testimony taken through witness examination at a court by a judge may be accepted as evidence provided that the procedural safeguards are met, such as the defendant’s right to cross examine the witness. |
| UK | Both types are admissible. |

⁸ Under the law of the Slovak Republic, the testimonies are only acceptable if certain rules have been complied with. This relates, for example, to the need to inform the questioned person (witness, aggrieved party, accused, etc.) of his/her rights. The questioned person acknowledges that he/she is duly informed by putting his/her own signature on the documents containing the information provided and or on the minutes of the hearing. From practical experience we learned that this method is not recognized by Japanese national law.

TABLE

accompanying Question 5

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

| | Interview by a police officer / prosecutor | Witness examination by a judge/court |
|--|---|--|
| Procedure | Invite the witness to the venue and conduct the interview | Submit documents to a judge/court, that decides to hold the witness examination and conducts the examination |
| Venue | Police station, prosecutor's office, etc. | Court |
| Oath | Witness does not take an oath | Witness takes an oath |
| Notification of witness' rights | N/A | Judge/court informs the witness on the punishment of perjury, and of the right to refuse to testify if it could result in criminal prosecution or in a conviction against the witness or against his or her immediate family-members |
| Presence of counsel during the execution of request | Discretion of the interviewer (rarely exercised) | Discretion of the judge/court |
| Estimated time of execution of request | Considerably quicker than a witness examination | In general, takes more time than conducting an interview |