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EUROPEAN COMMISSION

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2009/0188 (NLE)

Proposal for a

COUNCIL DECISION

on the conclusion of the Agreement between the European Union and Japan on the mutual legal assistance in criminal matters

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

On 26-27 February 2009 the Council decided to authorise 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 the absence of bilateral mutual legal assistance treaties between the Member States and Japan, the European Union seeks to establish more effective cooperation between its Member States and Japan in the area of mutual legal assistance in criminal matters.

The signing of the Agreement between the European Union and Japan on the mutual legal assistance in criminal matters was authorised by the Council in its Decision of 30 November 2009 based on Articles 24 and 38 of the Treaty on European Union. The Agreement should now be concluded.

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

Article 218(6)(a) of the Treaty on the Functioning of the European Union states that in the case of agreements covering fields to which the ordinary legislative procedure applies, the Council shall adopt a decision concluding the agreement, after obtaining the consent of the European Parliament.

The Commission therefore recommends to the Council, after obtaining the consent of the European Parliament, to adopt a decision concluding the Agreement between the European Union and Japan on mutual legal assistance in criminal matters.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union and in particular Article 82(1)(d), read in conjunction with Article 218(6)(a) thereof,

Having regard to the proposal from the Commission,

Having regard to the consent of the European Parliament,

Whereas:

- (1) On 29 – 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.
- (2) In accordance with Council Decision 2010/¹..., the Agreement between the European Union and Japan on the mutual legal assistance in criminal matters was signed on 30 November 2009, subject to its conclusion at a later date..
- (3) The Agreement has not yet been concluded. With the entry into force of the Lisbon Treaty on 1 December 2009, the procedures to be followed to that end by the European Union are governed by Article 218 of the Treaty on the Functioning of the European Union.
- (4) The Agreement should be concluded.
- (5) [In accordance with Article 3 of Protocol N° 21 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 the Treaty on the Functioning of the European Union, the United Kingdom and Ireland have notified their wish to take part in the adoption of this Decision.]
- (6) In accordance with Articles 1 and 2 of Protocol N° 22 on the Position of Denmark annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Decision and is not bound by the Agreement or subject to its application.

¹ This Council Decision has not yet been published.

HAS ADOPTED THIS DECISION:

Article 1

The Agreement between the European Union and Japan on mutual legal assistance in criminal matters is hereby concluded.

The text of the Agreement to be concluded is attached to this Decision.

Article 2

The President of the Council shall designate the person empowered to proceed, on behalf of the European Union, to the exchange of the instruments of approval provided for in Article 31(1) of the Agreement, in order to express the consent of the European Union to be bound by the Agreement.

Article 3

This Decision shall enter into force on the day of its adoption. It shall be published in the *Official Journal of the European Union*.

The date of entry into force of the Agreement shall be published in the *Official Journal of the European Union*.

Done at Brussels,

For the Council
[The President]