

DRAFT JOINT ACTION**of1998**

adopted by the Council on the basis of Article K.3 of the Treaty on European Union, on good practice in mutual legal assistance in criminal matters .

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article K.3(2)(b) thereof;

Having regard to the report from the High-Level Group on Organized Crime⁽¹⁾ approved by the Amsterdam European Council on 16-17 June 1997, and in particular Recommendation No.16 of the report;

Having regard to the results of the seminar on "Improving Judicial Co-operation and Protecting Human Rights" held in Luxembourg on 1-2 October 1997;

Taking into account the Joint Action of 1997 adopted on the basis of Article K.3 of the Treaty on European Union, on establishing a European Judicial Network, and in particular Articles 4 and 5 thereof;

Whereas it is necessary to make further practical improvements regarding mutual legal assistance between the Member States of the European Union, particularly for the purpose of combatting serious crime,

⁽¹⁾ OJ No C251, 15.8, 1997, p.1

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from : Incoming United Kingdom Presidency

to : Multidisciplinary Group on Organized Crime

Subject: Draft Joint Action on Good Practice in Mutual Legal Assistance in Criminal Matters

1. Delegations will find attached a draft Joint Action on good practice in mutual legal assistance in criminal matters. The Multi-Disciplinary Group (MDG) is invited to consider initially whether it supports the principle of the Joint Action, and whether the text is sufficiently acceptable to be capable of completion by the MDG without reference to working group level.

Purpose of Joint Action

2. Recommendation 16 in the Action Plan of the High Level Group on Organised Crime refers to the need to "accelerate procedures for judicial co-operation in matters relating to organised crime and considerably reduce delays in transmission and responses to requests".

3. There is considerable anecdotal evidence of the problem of delays. For example, the Italian delegation to the Working Party on Mutual Assistance in Criminal Matters pointed out in JUSTPEN 75 of 11 September 1997 (10585/97) that judges who had signed the Geneva Appeal had drawn attention to this problem in recent hearings before the European Parliament. In the public hearing on "Protection of the European Taxpayer" in Brussels on 15-16 April 1997, figures were presented showing that of 450 letters of request for examination of witnesses in the *Mani pulite* operation, 270 had remained unanswered. "When replies had been received, it had sometimes been necessary to wait 5 years. The delays were the main problem",⁽¹⁾ A concern expressed in the public hearing was that requests for legal assistance sent to EU Member States often seem to be ignored. Requesting authorities have had difficulty in finding out who is executing the request, when the assistance is likely to be provided and even whether the request has been received.

4. This is clearly unsatisfactory. Member States must ensure that there is confidence in the way the conventions on mutual legal assistance are operated. The Joint Action would provide an opportunity for Member States to demonstrate that they are committed to maintaining a high standard of service.

5. The Joint Action will supplement the forthcoming mutual evaluation exercise. Under that exercise, each Member State will submit to evaluation at a single point in time. The Presidency believes Member States should also undertake to manage and monitor their performance on a continuing basis.

⁽¹⁾ European Parliament, Directorate for Press and Audiovisual Services, Brussels, Background Note, 29 April 1997.

Summary of proposed Joint Action

6. The Joint Action proposes in Article 1 that each Member State should issue a statement of good practice. There would be no prescribed format, but the Joint Action envisages that the statements should include undertakings:

- to notify requesting authorities of the person who is responsible for executing the request;
- to give urgent requests priority; and
- to ensure that requests are treated no less favourably than comparable domestic cases.

7. The Joint Action also proposes that Member States should undertake to ensure that requests are acknowledged and that, in the event of significant delay, a progress report is sent to the requesting authority.

8. The statement of good practice would also include an undertaking that requesting authorities will send requests as soon as the need for the assistance is known, so that requested authorities will have adequate time to comply. When a request is urgent, the reasons for the urgency should be given, to help the requested authority to decide what level of priority to give to it.

9. Each member state would have discretion to include additional undertakings in its own statement.

10. Member States should also monitor whether they are complying with their statement, providing an adequate service and where necessary improving their performance. The Joint Action therefore proposes in Article 2 that Member States should provide a monitoring report once a year. The monitoring reports, like the statements, should be available to all Member States through the European Judicial Network. This would help to foster and encourage adoption of best EU practice, and assist the discussions of the Network.

HAS ADOPTED THE FOLLOWING JOINT ACTION:

Article 1

Statements of Good Practice

1. Each Member State shall deposit with the General Secretariat of the Council of the European Union within 12 months of the coming into force of this Joint Action a Statement of good practice in executing requests from other Member States and sending requests to other Member States for legal assistance in criminal matters.

2. The Statements referred to in paragraph 1 shall include undertakings:
 - (a) to acknowledge on receipt all requests, and written enquiries about the execution of requests, for assistance in obtaining evidence;

 - (b) when acknowledging the requests and enquiries referred to in this paragraph, to provide the requesting authorities with the name and contact details, including telephone and fax numbers and 24 hour emergency contact numbers, of the person having responsibilities for executing the request;

 - (c) to give priority to requests which have clearly been marked "urgent" by the requesting authorities, and to treat requests, whether or not "urgent", no less favourably than comparable enquiries being made in the requested Member State on behalf of that Member State's own authorities;

 - (d) where the assistance requested is not provided within 4 weeks of receiving the request, to give the requesting authorities a report, and thereafter and until the request is executed, to give further reports at intervals not exceeding 4 weeks, explaining as appropriate;

- how the request is being executed, whether any deadline specified in the request cannot be met and when the assistance requested is likely to be provided;
 - where the request cannot be executed in whole or in part, what further information is required from the requesting authorities and whether the requesting authorities should consider, in consultation with the requested authorities, how the assistance requested might otherwise be obtained;
- (e) to submit requests for assistance as soon as the need for the assistance is identified and, where a request is marked "urgent", to give the reasons for the urgency, which shall be exceptional if the assistance requested is of minor importance.

3. Any Statement submitted in accordance with this Article may, without prejudice to paragraph 2, be modified at any time by the Member State which made it by means of a further Statement deposited with the General Secretariat of the Council of the European Union. Any such further Statement shall be for the purposes of further improving good practice in executing requests for legal assistance in criminal matters.

Article 2

Monitoring of Performance

Without prejudice to the mechanism for evaluating the application and implementation at national level of international undertakings, adopted by the Council on ... December 1997, each Member State shall monitor compliance with its undertakings made in accordance with Article 1, and the times taken to execute requests for assistance from other Member States, and shall establish targets for improving compliance and reducing times taken. Each year before 1 April, each Member State shall deposit with the General Secretariat of the Council of the European Union an Annual Report on the results of this monitoring. The first Annual Report of each Member State shall be deposited no later than 1 April [1999] and shall cover the period from deposit, in accordance with paragraph 1 of Article 1, of the first Statement of the Member State to 1 January [1999].

Article 3

European Judicial Network

The General Secretariat of the Council of the European Union shall make the Statements referred to in Article 1 and the Annual Reports referred to in Article 2 available to the European Judicial Network as soon as they are deposited.

Article 4

Publication and Entry Into Force

This Joint Action shall be published in the Official Journal.

It shall enter into force on the day of its publication.

Done at Brussels, ...

For the Council
The President