

13300/1/97

REV 1
LIMITE

CRIMORG 33

NOTE

from : UK Presidency

to : Multidisciplinary Group on Organized Crime

No. prev. doc.: 13300/97 CRIMORG 33

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

Delegations will find attached a revised text of the draft Joint Action on good practice in mutual legal assistance in criminal matters which has been prepared following the discussion which took place on the draft Joint Action at the meeting of the Multidisciplinary Group on 12 and 13 January 1998.

DRAFT JOINT ACTION

of..... 1998

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 1998 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 combating serious crime,

⁽¹⁾ O.J. No. C 251, 15.08.1997, p.1.

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 General Secretariat of the Council of the European Union shall translate the Statements referred to in paragraph 1 into the official languages of the European Union and circulate the translations to Member States.
3. The Statements referred to in paragraph 1 shall be published in the Official Journal.
4. The Statements referred to in paragraph 1 shall include undertakings:
 - (a) to acknowledge all requests and written enquiries concerning the execution of requests unless a substantive reply is sent quickly; a Member State may exclude minor requests from this undertaking, in which case the Member State shall explain in its Statement the criteria for determining what constitutes a minor request;
 - (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 (...), of the authority, and if possible the person, responsible for executing the request;

- (c) to give priority to requests which have clearly been marked "urgent" or "organized crime" by the requesting authorities and to treat requests (...) no less favourably than comparable enquiries made in the requested Member State on behalf of that Member State's own authorities;
- (d) where the assistance requested cannot be executed in whole or in part, to give the requesting authorities a written or oral report explaining the difficulty and where possible offering to consider jointly with the requesting authorities how the difficulty might be overcome;
- (e) where the assistance cannot be provided within any period specified by the requesting authorities, to give those authorities a written or oral report, and any further reports requested by those authorities, explaining when the assistance requested is likely to be provided; a Member State may exclude minor requests from this undertaking, in which case the Member State shall explain in its Statement the criteria for determining what constitutes a minor request;
- (f) 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; the Statement shall include an undertaking not to mark as "urgent" requests which are of minor importance.

5. Any Statement submitted in accordance with this Article may, without prejudice to paragraph 4, 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 in the fight against organized crime adopted by the Council on 5 December 1997, each Member State shall monitor compliance with its undertakings made in accordance with Article 1, (...). The mechanism for such monitoring shall be for each Member State to determine having regard to its own arrangements for legal assistance in criminal matters. Where full statistics are not available, other methods of monitoring such as sampling techniques may be used. Each third year before 1 May, each Member State shall deposit with the General Secretariat of the Council of the European Union a report on the results of this monitoring. The first report of each Member State shall be deposited no later than 1 May 2001 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 2001.

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 triennial reports referred to in Article 2 available to the European Judicial Network as soon as they are deposited.

Article 4

Review

The Council shall review this Joint Action in the light of the results of the operation of the mechanism for evaluating the application and implementation at national level of international undertakings in the fight against organized crime adopted on 5 December 1997.

Article 5

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.