



**EUROPEAN UNION  
THE COUNCIL**

**Brussels, 31 March 1999 (12.04)  
OR. i**

**7141/99**

**LIMITE**

**JUSTPEN 20**

**NOTE**

---

from : Italian delegation

to : Working Party on Mutual Assistance in Criminal Matters

---

Subject : Italian proposals concerning Article 14 of the draft Convention on transnational organised crime (mutual legal assistance)

---

**SEMDOC**

Statewatch European Documentation &  
Monitoring Centre on justice and home  
affairs in the European Union

PO Box 1516, London N16 0EW, UK  
tel: 0181 802 1882 (00 44 181 802 1882)  
fax: 0181 880 1727 (00 44 181 880 1727)

Following paragraph 2, a provision might be inserted permitting spontaneous communication of data.

It is suggested that this be worded as follows:

new paragraph 2a

1. **Without prejudice to national law and within the limits of their competences, the judicial authorities of a Contracting State may without prior request transmit information relating to criminal matters to a judicial authority in the other State, where:**
  - (a) **they believe that such information could assist the receiving authority in undertaking or successfully concluding inquiries and procedures, or**
  - (b) **that these could result in a request formulated by that authority pursuant to the Convention.**
2. **The transmission of this information must be without prejudice to the transmitting State's own inquiries or criminal procedures.**
3. **The State providing the information may request that it remain confidential, even temporarily, or may place restrictions on its use.**

Following paragraph 13, a special provision might be inserted on the subject of video conferencing.

new paragraph 13a

1. **Where an individual is in the territory of a Contracting State and has to be heard as a witness or expert by the judicial authorities of another Contracting State, the former may at the request of the latter permit the hearing to take place by video conference, if the criminal proceedings for which the hearing was requested provides appropriate guarantees of conformity with its fundamental principles of law and where it is not possible or desirable for the individual in question to appear in person in the territory of the requesting State.**
2. **Applications for hearings by video conference shall contain, in addition to the details referred to in paragraph 10, a statement of the reasons why it is not possible or desirable for the witness or expert to attend, the names of the persons who are to conduct the hearing and their status.**
3. **The judicial authority of the requested State shall summon the individual concerned to appear in accordance with the terms prescribed by its legislation.**

4. The following provisions shall apply to hearings by video conference except as otherwise agreed in individual cases, including also measures for the protection of the person to be heard:
- (a) the hearing shall be attended by a judicial authority of the requested State, where necessary assisted by an interpreter, who shall also be responsible for ensuring both identification of the individual to be heard and compliance with the fundamental principles of the law of the requested State. If the judicial authority of the requested State judges during the hearing that the fundamental principles of the legislation of that State are infringed, it shall immediately take the necessary measures for the continuation of the hearing in accordance with those principles; if this is not possible the videoconference shall be interrupted;
  - (b) the hearing shall be conducted by the judicial authority of the requesting State in accordance with its own national laws;
  - (c) if the individual to be heard is unable to understand, he or she shall be assisted by an interpreter to be found by the requesting State;
  - (d) the individual to be heard may claim the right not to testify provided under the national law of the requested State or of the requesting State. Where the witness or expert refuses to testify despite having an obligation to do so, or does not testify truthfully, the national law of the requested State is applicable.
5. Without prejudice to measures agreed for the protection of persons, the judicial authority of the requested State shall on conclusion of the hearing draw up minutes indicating the date and place of the hearing, any oaths taken, and the fact that the hearing was conducted without any physical or mental pressure on the individual questioned.
6. All costs related to the holding of the video conference, including the travelling expenses of the witness or expert in the requested State, shall be refunded by the requesting State to the requested State, which may be provided with the necessary technical equipment by the requesting State if it does not have this.
7. On the basis of agreements between the central authorities as referred to in paragraph 8, the Contracting States may, where appropriate, apply the above provisions to hearings by video conference involving an accused person, in conformity with their national laws and with full respect for human rights.

Following paragraph 21, a provision could be inserted regarding joint investigations; such a measure might prove useful in investigations into the matters which are the subject of the Convention, but in view of the worldwide framework of the Convention and the lack of homogeneity of the legislations which might be involved, it could be applied only on a reciprocal basis and in accordance with bilateral agreements of a general or case-by-case nature.

It is suggested that the provision be worded as follows:

new paragraph 21a

**“On a reciprocal basis, the Contracting States may conclude bilateral or multilateral agreements or understandings whereby, in relation to matters which are the subject of criminal proceedings in on or more Member States, the judicial authorities concerned may, where necessary together with police authorities and after informing the central authority or authorities referred to in paragraph 8, act jointly within joint-investigation bodies. In the absence of such agreements or understandings, such joint investigations may be undertaken by agreement on a case-by-case basis.”**

---