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THE COUNCIL

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**NOTE**

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| from :    | Incoming Presidency   |
| to :      | Working Party on Cooperation in Criminal Matters  |
| Subject : | Draft Convention on mutual assistance in criminal matters between the Member States of the European Union<br>- Protocol to the Amsterdam Treaty integrating the Schengen acquis into the framework of the European Union (Norway and Iceland) |

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A. Legal basis

Article 6 of the Protocol to the TEU and the TEC integrating the Schengen acquis into the framework of the European Union provides that Norway and Iceland shall be associated with the implementation and further development of the Schengen acquis on the basis of the Agreement signed on 19 December 1996.

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Pursuant to Article 6 of the Protocol, the 1996 Agreement has been replaced by the Agreement on the association of Iceland and Norway with the implementation, application and development of the Schengen acquis, signed on 18 May 1999<sup>1</sup>. Under that Agreement a Joint Committee (COMIX) was established, consisting of representatives of the governments of Iceland and Norway, the members of the Council of the European Union and the Commission of the European Communities. Article 4 of the Agreement provides that the Joint Committee, meeting at the level of experts, senior officials and ministers, have the responsibility to address, in accordance with the Agreement, all matters covered by Article 2 thereof. These matters include acts or measures of the European Union amending or building upon the provisions listed in the Annexes to the Agreement. Such measures, provided that they are adopted in accordance with the procedures of the Agreement, and without prejudice to its Article 8, are binding for Norway and Iceland.

The Council Decision of 17 May 1999 on certain arrangements for the application of the above Agreement<sup>2</sup> provides in its Article 1 that the procedures laid down in the agreement shall be applied to proposals and initiatives for the further development of the Schengen acquis in specified areas. Article 1.I of the Decision refers to the arrangements for judicial cooperation in criminal matters described in Articles 48 the 63 and 65 to 69 of the 1990 Convention implementing the 1985 Schengen Agreement. Article 1.H refers to any forms of police cooperation coming under Articles 39 to 43, 46, 47, 73 and 126 to 130 of the 1990 Schengen Convention.

## B. Substance

The Presidency proposes that the Working Party as the first step decides which provisions of the draft Convention on mutual assistance should be considered to constitute a further development of the Schengen acquis within the meaning of the above Council decision.

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<sup>1</sup> Doc. 7417/99 SCHENGEN 26 + COR 1, COR 2, ADD 1 REV 1.

<sup>2</sup> Doc. 8020/99 SCHENGEN 38

Article 1 of the draft Convention stipulates that the purpose of the Convention is to supplement the provisions and facilitate the application, of, among other instruments, the 1990 Schengen Convention. The Presidency suggests that this should be interpreted in the light of the fact that the purpose of the Schengen provisions on police and judicial cooperation in particular is to meet the challenges posed by the gradual abolition of internal frontier checks. This general objective should be kept in mind when examining the draft Convention Article by Article.

The Presidency is of the view that the provisions of the draft Convention can be divided in three groups:

1. A first group of draft provisions have corresponding provisions in the 1990 Schengen Convention and are therefore directly linked to the Schengen acquis. These are:
  - Article 2 (Procedures in connection with which assistance is to be afforded) - see Article 49(a) of the 1990 Schengen Convention;
  - Article 4 (Sending and service of procedural documents) - see Article 52 Schengen;
  - Article 5 (Transmission of requests for mutual assistance) - see Article 53 Schengen;
  - Article 6 (Spontaneous exchange of information) - see Article 46 Schengen, and
  - Article 10 (Controlled deliveries) - see Article 73 Schengen.

The Presidency suggests that these provisions should be regarded as constituting further development of the 1990 Schengen Convention. This suggestion is based on an overall assessment of the draft provisions in the light of the purpose of the draft Convention and the Schengen provisions. The "further development" requirement may be met under various criteria: In comparison with the 1990 Schengen Convention, the draft provisions may be more binding, more extensive regarding procedure, more extensive regarding the substance or a combination thereof.

2. A second group of draft provisions do not have corresponding provisions in the 1990 Schengen Convention, but are closely related to the areas regulated by that Convention and it could therefore be considered whether these provisions should be regarded as constituting further development of Schengen provisions. These provisions are Article 10a (Joint investigation teams) and Article 11 (Covert investigation). In the view of the Presidency, these provisions relate to Articles 40-44 and 47 of the 1990 Schengen Convention (cross-border surveillance and hot pursuit and the rights and responsibilities of officers involved in such operations).
3. In the view of the Presidency, the remaining provisions of the draft Convention do not directly relate to the provisions of the 1990 Schengen Convention, although at least some of them by application of a very broad approach might be seen as a further development of Schengen provisions. However, the Presidency proposes that these remaining provisions should not be considered as a further development of the Schengen acquis within the meaning of the above Council Decision.

A more detailed table comparing the text of the draft Convention with that of the relevant provisions of the 1990 Schengen Convention is set out in the Annex.

### C. Policy options

When it has been determined which provisions are to be considered as further development, the next step is to determine how to proceed in terms of instruments to be adopted.

The Presidency proposes the following options for further consideration:

1. The first option could be to split the existing draft Convention in two parts, a Schengen-related part and a non-Schengen part (as suggested by Legal Service in doc 8380/99 JUR 186 JUSTPEN 37). The result would be the adoption by the Council of two instruments. One on Schengen related issues under the COMIX procedures, and one on other issues under the normal procedures.

The two instruments would not necessarily have to be adopted at the same time. For example, a Convention on issues not related to Schengen could be adopted as a first step, followed by the adoption of a Protocol to that Convention under the COMIX procedures and covering Schengen-related issues.

This option would have the advantage of being clear in terms of procedure, but might be less appropriate for practitioners.

- 2 The second option could be to keep the Convention as a whole. A clear distinction could be made in the text between Schengen-related issues and other issues. The Schengen-related part would be dealt with in accordance with the COMIX procedure. The other issues would be negotiated under the normal procedures. A separate provision could explicitly specify which provisions are Schengen-related and provide that Norway and Iceland are bound by those provisions under the conditions laid down in the 1999 Agreement.

If all involved States so wished, the part of the Convention not related to Schengen could be made applicable between Norway and Iceland and the EU Member States by means of a separate agreement. That agreement could be an agreement between the EU and Norway and Iceland under Article 38 of the TEU.

This option is also clear in terms of procedure, and may be more appropriate for practitioners.

No matter which option is chosen, the role of the special arrangements for the United Kingdom and Ireland in the Protocol to the TEU and the TEC integrating the Schengen acquis into the European Union will also have to be taken into account. It is in this regard noted that the United Kingdom has requested to take part in Articles 39-44, 46-76, 92-119 and 126-130 of the 1990 Schengen Convention (doc 8562/99 SCHENGEN 56).

#### D. Proceedings in the Working Party

The Presidency invites delegations to be prepared to discuss the matters described above at its forthcoming meeting on 15 and 16 July 1999. The Presidency intends to submit these matters to the Article 36 Committee after the discussion in the Working Party.

| <b>Draft Mutual Legal Assistance Convention</b><br>(Basis: 8560/99 JUSTPEN 39 + 9191/99 COPEN 6 CATS 8)  | <b>Schengen provisions</b><br>(unofficial translation)   | <b>Comments by the Presidency</b><br>Implementation or development of the Schengen acquis   |
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| <p>Article 1(1)</p> <p><i>"The purpose of this Convention is to supplement the provisions and facilitate the application between the Member States of the European Union.</i></p> <p><i>of:</i></p> <p><i>the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959, hereinafter referred to as the "European Mutual Assistance Convention",</i></p> <p><i>the Additional Protocol of 17 March 1978 to the European Mutual Assistance Convention,</i></p> <p><i>the Convention of 19 June 1990 applying the Schengen Agreement of 14 June 1985 on the Gradual Abolition of Checks at their Common Borders, in the context of relations between the Member States party to that Convention, and</i></p> <p><i>Chapter 2 of the Treaty on Extradition and Mutual Assistance in Criminal Matters between the Kingdom of Belgium, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands of 27 June 1962, as amended by the Protocol of 11 May 1974, hereinafter referred to as the "Benelux Treaty", in the context of relations between the Member States of the Benelux Economic Union".</i></p> <p>Article 1(2)</p> <p><i>"Paragraph 1 shall not affect the application of more favourable provisions in bilateral or multilateral agreements between Member States or, as provided for in Article 26(4) of the 1959 Convention, arrangements in the field of mutual assistance in criminal matters agreed on the basis of uniform legislation or of a special system providing for the reciprocal application of measures of mutual assistance in their respective territories"</i></p> | <p>Art 48(1):</p> <p><i>The provisions of this Chapter are intended to supplement the European Convention of 20 April 1959 on Mutual Assistance in Criminal Matters as well as, in relations between the Contracting Parties which are members of the Benelux Economic Union, Chapter 2 of the Benelux Treaty on Extradition and Mutual Assistance in Criminal Matters of 27 June 1962, as amended by the Protocol of 11 May 1974, and to facilitate the implementation of these agreements.</i></p> <p>Article 48(2)</p> <p><i>Paragraph 1 shall not affect the application of the broader provisions of the bilateral agreements in force between the Contracting Parties.</i></p> | <p>The provision shows that the E.U. draft aims at supplementing Schengen, but does not constitute in itself a further development.</p> |

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| <p>Article 2(1)</p> <p><i>" Mutual assistance shall also be afforded in proceedings brought by the administrative authorities in respect of offences which are punishable under the national law of the requesting or the requested Member State, or both, by virtue of being infringements of the rules of law, where the decision may give rise to proceedings before a court having jurisdiction in particular in criminal matters. "</i></p> | <p>Article 49(a):</p> <p><i>Mutual assistance shall also be granted:</i></p> <p><i>(a) in proceedings brought by the administrative authorities for offences which are punishable in one of the two Contracting Parties or in both Contracting Parties by virtue of being an infringement of the law and where the decision may give rise to proceedings [in particular] before a criminal court;</i></p> | <p>virtually identical</p> <p>Paragraph 1 of Article 2 of the draft MLA Convention is consistent with paragraph a) of Article 49 of the Schengen Convention. Paragraph 2 of Article 2 of the draft Convention <u>widens the scope</u> of procedures in connection with which assistance is to be afforded to <u>offences or infringements for which a legal person may be held liable</u> in the requesting Member State.</p> <p>Implementation/further development.</p> <p>(Note also a slight difference between English and French text.)</p> |
| <p>Article 2(2)</p> <p><i>" Mutual assistance shall also be afforded in connection with criminal proceedings and procedures as referred to in paragraph 1 which relate to offences or infringements for which a legal person may be held liable in the requesting Member State ".</i></p>  |   |  |
| <p>Article 2 a</p> <p><i>" For the purposes of Title III of this Convention, a "criminal investigation" is an investigation following the commission of a specific criminal offence in order to <u>identify and arrest, charge, prosecute or deliver judgement on those persons responsible</u>".</i></p>  | 0   | No equivalence   |

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| <p>Article 3(1)<br/> <i>"Where mutual assistance is afforded and provided that such formalities and procedures are not contrary to the fundamental principles of law in the requested Member State, the Member States shall undertake to comply, unless otherwise provided in this Convention, for purposes of executing letters rogatory, with formalities and procedures expressly indicated by the requesting Member State. The requested Member State shall execute the request for assistance as soon as possible and shall take as full account as possible of any deadlines set by the requesting Member State. The requesting Member State shall explain the reason for the deadline."</i></p>  | <p>Article 51 b<br/> The Contracting Parties may not make the admissibility of letters rogatory for search or seizure dependent on any other conditions than the following:<br/> (a) [...] (b) enforcement of the letters rogatory is consistent with the law of the requested Contracting Party.</p> | <p>Could be questioned whether it is a further development or not of Schengen.</p> <p>However, as Article 3(1) is limited to procedure, the Presidency is of the view that the provision is not Schengen related.</p> |
| <p>Article 3(2)<br/> <i>"Where the request cannot, or cannot fully, be executed in accordance with the requirements set by the requesting Member State, the authorities of the requested Member State shall promptly inform the authorities of the requesting Member State and indicate the conditions under which it might be possible to execute the request. The authorities of the requesting and the requested Member State may subsequently agree on further action to be taken concerning the request, where necessary making such action subject to the fulfilment of those conditions"</i></p>   | <p>0</p>  | <p>No equivalence.</p>  |
| <p>Article 3(3)<br/> <i>"If it is foreseeable that the deadline set for execution of the request cannot be complied with, and if the grounds referred to in paragraph 1, third sentence, indicate in a concrete way that this will lead to substantial impairment of the proceedings being conducted in the requesting Member State, the authorities of the requested Member State shall promptly indicate the estimated time needed for execution of the request. The authorities of the requesting Member State shall promptly indicate whether the request is to be upheld nonetheless. The authorities of the requesting and requested Member States may subsequently agree on further action to be taken concerning the request"</i></p> | <p>0</p>  | <p>No equivalence.</p>  |



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| <p>Article 4(1)</p> <p><i>" Each Member State shall send procedural documents intended for persons who are in the territory of another Member State to them directly by post".</i></p>   | <p>Article 52(1)</p> <p><i>"Each Contracting Party may send procedural documents directly by post to persons who are in the territory of another Contracting Party. The Contracting Parties shall send the Executive Committee a list of the documents which may be forwarded in this way"</i></p>   | <p>Further development.</p> <p>Article 4 of the draft MLA Convention relates to Article 52 of the Schengen Convention <u>enables</u> Contracting Parties to send procedural documents directly by post. Article 4(1) of the draft Convention changes this rule as an <u>obligation</u> from which exceptions are allowed under paragraph 2.</p> <p><u>Presidency's suggestion</u>: further development since the MLA provision is more binding.</p> |
| <p>Article 4(2)</p> <p><i>" Procedural documents may be sent via the competent authorities of the requested Member State only if</i></p> <ul style="list-style-type: none"> <li><i>- the address of the person for whom the document is intended is unknown or uncertain,</i></li> <li><i>- the relevant procedural law of the requesting Member State requires proof other than proof that can be obtained by post of the service of the document on the addressee, or</i></li> <li><i>- it has not been possible to serve the document by post, or</i></li> <li><i>– the requesting Member State has justified reasons for considering that dispatch by post will be ineffective or is inappropriate ".</i> </li></ul> | <p>Article 52(5)</p> <p><i>Notwithstanding paragraph 1, procedural documents may be forwarded via the judicial authorities of the requested Contracting Party where the addressee's address is unknown or where the requesting Contracting Party requires a formal service.</i></p>  | <p>Further development</p> <p>Note that the 2 last indents do not have any equivalent in the Schengen Convention.</p>   |
| <p>Article 4(3)</p> <p><i>" Where there is reason to believe that the addressee does not understand the language in which the document is drafted, the document – or at least the important passages thereof – must be translated into (one of) the language(s) of the Member State in the territory of which the addressee is staying. If the authority by which the procedural document was issued knows that the addressee understands only some other language, the document – or at least the important passages thereof – must be translated into that other language".</i></p>  | <p>Article 52(2)</p> <p><i>"Where there is reason to believe that the addressee does not understand the language in which the document is written, the document - or at least the important passages thereof - must be translated into (one of) the language(s) of the Contracting Party in the territory of which the addressee is staying. If the authority forwarding the document knows that the addressee speaks only another language, the document - or at least the important passages thereof - must be translated into that other language".</i></p> | <p>Identical.</p> <p>Schengen implementation.</p>   |

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| Article 4(4)<br><i>" All procedural documents shall be accompanied by a report stating that the addressee may obtain information from the authority by which the document was issued or from other authorities in that Member State regarding his or her rights and obligations concerning the document. Paragraph 3 shall also apply to that report".</i>   |   | Further development.   |
| Article 4(5)<br><i>" Articles 8, 9 and 12 of the European Mutual Assistance Convention and Articles 32, 34 and 35 of the Benelux Treaty shall apply".</i>  | Article 52.3  | Article 52.3 corresponds to Article 8 of the 1959 Convention, with additional elements relating to transmission by post. Articles 9 and 12 of the 1959 Convention are not dealt with in Schengen.  |
| Article 5(1)<br><i>" Requests for mutual assistance and the communications referred to in Article 6 shall be made directly between judicial authorities with territorial competence for their service and execution, and returned through the same channels unless otherwise specified in this Article. Any charge brought by a Member State for proceedings before the courts of another Member State within the meaning of Article 21 of the European Mutual Assistance Convention and Article 42 of the Benelux Treaty may be the subject of direct communications between the competent judicial authorities".</i> | Article 53(1)<br><br><i>Requests for <u>assistance</u> may be made directly between judicial authorities and returned via the same channels..</i>   | Article 5 of the draft MLA Convention relates to Article 53 of the Schengen Convention, Article 53 (1) of the Schengen Convention <u>allows</u> requests for assistance to be made directly between judicial authorities. Article 5 of the draft MLA Convention amends this rule as an <u>obligation</u> from which exceptions or reservations are allowed under paragraphs 2 and 3.<br><br>Further development.   |
| Article 5(2)<br><i>" Paragraph 1 shall not prejudice the possibility of requests being sent or returned in specific cases:</i><br><br>(a) <i>between a central authority of a Member State and a central authority of another Member State, or</i><br><br>(b) <i>between a judicial authority of one Member State and a central authority of another Member State".</i>  | Article 53(2)<br><i>Paragraph 1 shall not prejudice the possibility of requests being sent and returned <u>between Ministries of Justice</u> or through national central offices of the International Criminal Police Organization.</i> | Article 53 (2) of the Schengen Convention enables requests to be made via central authorities or through INTERPOL. The draft MLA Convention <u>broadens the channels</u> to contacts between 1) judicial authorities and central authorities (paragraph 2(b)); 2) any body competent under the TEU (paragraph 4); 3) judicial and police authorities in cases of controlled delivery and covert investigations (paragraph 5) and 4) between administrative and judicial or central authorities (paragraph 6). Under paragraph 7 there is a possibility to make a reservation to paragraphs 5 and/or 6.<br><br>Further development. |

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| <p>Article 5(3)<br/> <i>"A Member State may declare, in a statement to be sent to the depositary of this Convention, that its judicial authorities do not, or do not in general, have authority to execute requests received directly as envisaged in paragraph 1, or requests received from a central authority as envisaged in paragraph 2(b), and that requests and information must therefore be sent via the central authority or authorities of the Member State to the extent indicated in the statement. The Member State may at any time amend its statement by means of a communication to be made to the depositary and any such amendment shall be for the purpose of giving greater effect to paragraph 1".</i></p> | <p>See Article 53.1</p>  | <p>Further development</p>   |
| <p>Article 5(4)<br/> <i>Any request as referred to in paragraph 1 may, for the sake of speed, be made via the International Criminal Police Organization (Interpol) or any body competent under provisions introduced pursuant to the Treaty on European Union.</i></p>  | <p>Article 53(2)<br/> <i>Paragraph 1 shall not prejudice the possibility of requests being sent and returned between Ministries of Justice or through national central offices of the International Criminal Police Organization.</i></p>  | <p>Further development<br/> (see comments on Article 5(2) above)</p>   |
| <p>Article 5(5)<br/> <i>"Where, in respect of requests pursuant to Articles 10 or 11, the competent authority is a judicial authority or a central authority in one Member State and a police or customs authority in the other Member State, requests may be made and answered directly between these authorities. Paragraph 4 shall apply to these contacts."</i></p>  | <p>Article 73<br/> 1. <i>The Contracting Parties undertake, in accordance with their constitutions and their national legal systems, to adopt measures to allow controlled deliveries to be made as part of the illicit trafficking of narcotic drugs and psychotropic substances.</i><br/><br/> 2. <i>In each individual case, a decision to allow controlled deliveries will be taken on the basis of prior authorization from each of the Contracting Parties concerned.</i><br/><br/> 3. <i>Each Contracting Party shall retain responsibility for and control over any operation within its own territory and shall be entitled to intervene.</i><br/><br/> Article 40 lists the competent authorities for allowing observations.</p> | <p>Article 73 only deals with cases of narcotic drugs but covers on the other hand police and judicial co-operation.</p> <p>Article 10 of the EU draft is general but, for the reasons of Article 5(5) applies only to cases where judicial authorities are involved in at least one of the States concerned.</p> <p>Article 11 of the EU draft deals with undercover operations rather than observations. However, it could be considered whether this provision should be regarded as constituting further development.</p> <p>Further development<br/> (See comments on Article 5(2) above)</p> |
| <p>Article 5(6)<br/> <i>"Where, in respect of requests for assistance in relation to proceedings as envisaged in Article 2(1) the competent authority is a judicial authority or a central authority in one Member State and an administrative authority in the other Member State, requests may be made and answered directly between these authorities"</i></p>  | <p>Requests for assistance are dealt under Article 53, which does not foreseen the possibility aimed by Article 5(6).</p>  | <p>Further development<br/> (See comments on Article 5(2) above)</p>   |

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| <p>Article 5(7)<br/> <i>" Any Member State may declare, when giving the notification provided for in Article 18(2), that it is not bound by the first sentence of paragraph 5 and/or by paragraph 6 or that it will only apply those paragraphs under certain conditions which it shall specify. Such a declaration may be withdrawn or amended at any time".</i></p>  |   | <p>Further development</p>   |
| <p>Article 5(8)<br/> <i>The following requests or communications shall be made through the central authorities of the Member States:</i></p> <p><i>a) requests for temporary transfer or transit of persons held in custody as referred to in Article 8 of this Convention, in Article 11 of the European Mutual Assistance Convention and in Article 33 of the Benelux Treaty:</i></p> <p><i>b) notices of judgements as referred to in Article 22 of the European Mutual Assistance Convention and Article 43 of the Benelux Treaty. However, requests for copies of convictions and measures as referred to in Article 4 of the Additional Protocol to the European Mutual Assistance Convention may be made directly to the competent authorities.</i></p> | <p>Article 53(3)<br/> <i>Requests for the temporary transfer or transit of persons under temporary arrest or being detained or who are serving a custodial sentence, and the periodic or occasional exchange of information from the judicial records must be effected through the Ministries of Justice.</i></p> | <p>Further development<br/> Article 53 3) of the Schengen Convention obliges requests for temporary transfer of persons in custody as well as periodic or occasional exchange of date to be made through central authorities. Article 5(8) of the MLA Convention sets also an obligation to transmit certain requests via central authorities. As Schengen, it applies to requests on temporary transfer and notices of judgements as referred to in article 22 of the 1959 Convention. However, <u>it enables copies</u> of convictions meant in Article 4 to the Additional Protocol to the 1959 Convention to be <u>sent directly</u> via competent authorities.</p> <p><u>Presidency's suggestion concerning Article 5</u>: further development since 1) paragraph 1 is more binding; 2) paragraphs 2(b), 5, 6 and 8 widen the procedural channels of communication. The Presidency's view is that a possibility to make reservations would not prevent Article 5 as a whole from being further development; it is the Presidency's understanding that majority of Member States would not make reservations. On the other hand for those Member States who are planning to make reservations, reservations should be seen as a temporary arrangement (see paragraph 3 which states that the Member States may at any time amend its statement for the purpose of giving greater effect to paragraph 1).</p> |

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| <p>Article 6: Spontaneous exchange of information.</p> <p>1. <i>The competent authorities of the Member States may, within the limits of their national law and without a request to that effect, exchange information relating to criminal offences or infringements of regulations, as referred to in Article 2(1), the punishment or handling of which falls within the competence of the receiving authority at the time the information is provided.</i></p> <p>2. <i>The providing authority may, pursuant to its national law, impose conditions on the use of such information by the receiving authority.</i></p> <p>3. <i>The receiving authority shall be bound by those conditions.</i></p> | <p>Article 46</p> <p>1.<i>In certain cases, each Contracting Party may, in compliance with its national legislation and without being asked, send the Contracting Party concerned any information which may be of interest to it in helping prevent future crime and offences against or threats to public policy and security.</i></p> <p>2.<i>Information shall be exchanged, without prejudice to the arrangements for cooperation in border areas referred to in Article 39 (4), via a central body to be designated. In particularly urgent cases, the exchange of information within the meaning of this Article may take place directly between the police authorities concerned, unless national provisions stipulate otherwise. The central body shall be informed of this as soon as possible.</i></p> | <p>Article 6 of the draft Convention relates to Article 46 of the Schengen Convention. Article 46 of the Schengen Convention provides that in relation to <u>police cooperation</u> contracting Parties may spontaneously exchange information concerning <u>crime prevention</u>. Article 6 of the draft convention widens the scope of spontaneous exchange of information because the provision applies <u>in general to these spontaneous exchange of information of competent authorities concerning criminal offences</u>.</p> <p><u>Presidency's suggestion</u>: further development since the MLA provision goes further in procedure (applies in general to competent authorities) and in substance; the MLA applies to criminal offences (note: in substance it does not overlap with Article 46 of the Schengen Convention which applies only to crime prevention)</p> |
| Article 7 Restitution   | 0  | Not Schengen related  |
| Article 8 : Temporary transfer of persons held in custody for purposes of investigation   |  | <p>Not Schengen related</p> <p>For the modalities of the transmission, see comments on Article 5 of the EU draft.</p>   |
| Article 9 : Hearing by video conference.  | 0  | Not Schengen related  |
| Article 9 a :Hearing of witnesses and experts by telephone conference   | 0  | Not Schengen related  |

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| Article 10: Controlled deliveries<br><br>1. <i>Each Member State shall undertake to ensure that, at the request of another Member State, controlled deliveries may be permitted on its territory in the framework of criminal investigations into extraditable offences.</i><br>2. <i>The decision to carry out controlled deliveries shall be taken in each individual case by the competent authorities of the requested Member State, with due regard for the national law of that State.</i><br>3. <i>Controlled deliveries shall take place in accordance with the procedures of the requested Member State. Competence to act and to direct operations shall lie with the competent authorities of that Member State.</i> | Article 73<br><br><i>The Contracting Parties undertake, in accordance with their constitutions and their national legal systems, to adopt measures to allow controlled deliveries to be made as part of the illicit trafficking of narcotic drugs and psychotropic substances.</i> | Article 10 of the draft Convention relates to Article 73 of the Schengen Convention which provides that contracting Parties undertake to take measures to allow controlled deliveries to take place in <u>the illicit traffic in narcotic drugs and psychotropic substances</u> . Article 10 of the draft Convention widens the scope of this obligation <u>to all extraditable offences</u> .<br><br><u>Presidency's suggestion</u> : further development since it broadens the scope of controlled deliveries to all extraditable offences. (See comments on Article 5.5). |
| Article 10 a : Joint investigation teams  | 0  | These articles do not have a corresponding provision in the Schengen Convention. However, it could be considered whether these provisions should be regarded as further development. (Article 40 – 43 and 47 at Schengen).   |
| Article 11: Covert investigations   |  |  |
| Article 11 a: Interception of telecommunications  | 0  | Not Schengen related.  |
| Article 11 ter: Interception of subjects on national territory by the use of service providers  | 0  | Not Schengen related.  |
| Article 12: Requests for interception of telecommunications   | 0  | Not Schengen related.  |
| Article 13: Interception of subjects on the territory of another Member State without technical assistance of this Member State   | 0  | Not Schengen related.  |
| Article 14: Responsibility for charges made by telecommunications operators   | 0  | Not Schengen related.  |
| Article 14 a: Bilateral arrangements  |  | Not Schengen related.<br>See however Article 44 of the Schengen Convention.  |

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| <p>Article 16: Statements</p> <p>1. When giving the notification referred to in Article 18(2), each Member State shall make a statement naming the authorities which, in addition to those already indicated in the European Mutual Assistance Convention and the Benelux Treaty, are competent for the application of this Convention and the application between the Member States of the provisions on mutual assistance in criminal matters of the instruments referred to in Article 1(1), including in particular:</p> <p>(a) the competent administrative authorities or services within the meaning of Article 2(1), if any,</p> <p>(b) one or more central authorities for the purposes of applying Article 5 as well as the authorities competent to deal with the requests referred to in Article 5(8)(b),</p> <p>(c) the police or customs authorities competent for the purposes of Article 5(5), if any,</p> <p>(d) the administrative authorities competent for the purposes of Article 5(6), if any, and</p> <p>(e) the authority or authorities competent for the purposes of the application of Articles 12 and paragraphs 1-4 of Article 13.</p> <p>(f) (...)</p> <p>2. Statements made in accordance with paragraph 1 may be amended in whole or in part at any time by the same procedure..</p> |  | <p>This Article could be considered as relevant in so far as it covers previous provisions which are considered to be implementation or further development of Schengen.</p> |
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| Article 17: Reservations<br>No reservations may be entered in respect of this Convention, other than those for which it makes express provision. | Article 55: Member States can make a declaration stating that they are not bound by Article 54 (ne bis in idem)<br><br>Article 137: no reservation, except for Article 60. | This Article could be considered as relevant in so far as it covers previous provisions which are considered to be implementation or further development of Schengen. |
| Article 18: Entry into force   | Article 139 (2)  | Not Schengen related  |
| Article 19: Accession of new Member States.  |  | Not Schengen related  |
| Article 20: depositary   | Article 139 (1)  | Not Schengen related  |