



**COUNCIL OF
THE EUROPEAN UNION**

**Brussels, 23 July 1999
(OR. en)**

**9636/99
COR 1 (f,d,i,en,dk,gr,es,s)**

LIMITE

COPEN 11

CORRIGENDUM

Subject : Council Act establishing the Convention on Mutual Assistance in Criminal Matters
between the Member States of the European Union

Cover page and page 1, Title

For : "Council Act establishing the Convention ... "

Read : "Draft Council Act establishing the Convention ... "

Page CONV/AMMC/en 1, Title

For : "CONVENTION ESTABLISHED BY THE COUNCIL"

Read : "DRAFT CONVENTION ESTABLISHED BY THE COUNCIL"

SEMDOC

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DRAFT COUNCIL ACT

of

**establishing the Convention on Mutual Assistance in Criminal Matters
between the Member States of the European Union**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 34(2)(d) thereof,

Whereas, for the purposes of achieving the objectives of the Union, the Member States regard the rules governing mutual assistance in criminal matters between the Member States of the European Union as a matter of common interest coming under the cooperation provided for in Title VI of the Treaty,

CONVENTION
ESTABLISHED BY THE COUNCIL
IN ACCORDANCE WITH ARTICLE 34
OF THE TREATY ON EUROPEAN UNION,
ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS
BETWEEN THE MEMBER STATES OF THE EUROPEAN UNION

THE HIGH CONTRACTING PARTIES to this Convention, Member States of the European Union,

REFERRING to the Council Act establishing the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union,

DESIRING to improve judicial cooperation in criminal matters between the Member States of the Union,

POINTING OUT that the Member States have a common interest in ensuring that mutual assistance between the Member States is provided in a fast and efficient manner compatible with the basic principles of their national law, including the principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950,

EXPRESSING their confidence in the structure and functioning of their legal systems and in the ability of all Member States to guarantee a fair trial,

TAKING INTO ACCOUNT the importance of concluding a Convention between the Member States of the European Union to supplement the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959 and other Conventions in force in this area,

CONSIDERING that the provisions of those Conventions remain applicable for all matters not covered by this Convention,

CONSIDERING that the Member States attach importance to strengthening judicial cooperation, while continuing to apply the principle of proportionality,

RECOGNISING that this Convention does not affect the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security, and that it is a matter for each Member State to determine, in accordance with Article 33 of the Treaty on European Union, under which conditions it will maintain law and order and safeguard internal security,

HAVE AGREED ON THE FOLLOWING PROVISIONS:

TITLE I

REQUESTS FOR MUTUAL ASSISTANCE

ARTICLE 1

General provisions

1. The purpose of this Convention is to supplement the provisions and facilitate the application between the Member States of the European Union, of:

- the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959, hereinafter referred to as the "European Mutual Assistance Convention";
- the Additional Protocol of 17 March 1978 to the European Mutual Assistance Convention;
- 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
- 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.

2. 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 European Mutual Assistance 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.

ARTICLE 2

Procedures in connection with which assistance is to be afforded

1. 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.
2. 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.

ARTICLE 3

Criminal investigation

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 identify and arrest, charge, prosecute or deliver judgment on those persons responsible.

ARTICLE 4

Compliance with the formalities and procedures indicated by the requesting Member State

1. 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 the 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 reasons for the deadline.
2. 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.

3. If it is foreseeable that the deadline set for execution of the request cannot be complied with, and if the reasons 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.

ARTICLE 5

Sending and service of procedural documents

1. Each Member State shall send procedural documents intended for persons who are in the territory of another Member State to them directly by post.
2. Procedural documents may be sent via the competent authorities of the requested Member State only if
 - the address of the person for whom the document is intended is unknown or uncertain, or
 - 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
 - it has not been possible to serve the document by post, or

- the requesting Member State has justified reasons for considering that dispatch by post will be ineffective or is inappropriate.
3. 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.
4. 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.
5. Articles 8, 9 and 12 of the European Mutual Assistance Convention and Articles 32, 34 and 35 of the Benelux Treaty shall apply.

ARTICLE 6

Transmission of requests for mutual assistance

1. Requests for mutual assistance and the communications referred to in Article 7 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.

2. Paragraph 1 shall not prejudice the possibility of requests being sent or returned in specific cases:

- (a) between a central authority of a Member State and a central authority of another Member State, or
- (b) between a judicial authority of one Member State and a central authority of another Member State.

3. 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.

4. Any request as referred to in paragraph 1 may, for the sake of speed, be made via the International Criminal Police Organisation (Interpol) or any body competent under provisions introduced pursuant to the Treaty on European Union.

5. Where, in respect of requests pursuant to Articles 12 or 14, 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.

6. 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.

7. Any Member State may declare, when giving the notification provided for in Article 23(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.

8. The following requests or communications shall be made through the central authorities of the Member States:

- (a) requests for temporary transfer or transit of persons held in custody as referred to in Article 9 of this Convention, in Article 11 of the European Mutual Assistance Convention and in Article 33 of the Benelux Treaty;

- (b) notices of judgments 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.

ARTICLE 7

Spontaneous exchange of information

1. 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 as well as the infringements of the rules of law 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.
2. The providing authority may, pursuant to its national law, impose conditions on the use of such information by the receiving authority.
3. The receiving authority shall be bound by those conditions.

TITLE II

REQUESTS FOR CERTAIN SPECIFIC FORMS OF MUTUAL ASSISTANCE

ARTICLE 8

Restitution

1. At the request of the requesting Member State and without prejudice to the rights of bona fide third parties, the requested Member State may place articles obtained by criminal means at the disposal of the requesting State with a view to their return to their rightful owners.
2. In applying Articles 3 and 6 of the European Mutual Assistance Convention and Articles 24(2) and 29 of the Benelux Treaty, the requested Member State may waive the return of articles supplied to the requesting Member State if the restitution of such articles to the rightful owner may be facilitated thereby. The rights of bona fide third parties shall not be affected.
3. In the event of any such waiver as referred to in paragraph 2, the requested Member State shall exercise no security right or other right of recourse under tax or customs legislation in respect of surrendered articles, other than those owned by the rightful owner.

ARTICLE 9

Temporary transfer of persons held in custody for purposes of investigation

1. Where there is agreement between the competent authorities of the Member States concerned, a Member State which has requested an investigation for which the presence of a person held in custody on its own territory is required may temporarily transfer that person to the territory of the Member State in which the investigation is to take place.
2. The agreement shall cover the arrangements for the temporary transfer of the person and the date by which he must be returned to the territory of the requesting Member State.
3. Where consent to the transfer is required from the person concerned, a statement of consent or a copy thereof shall be provided promptly to the requested Member State.
4. The period of custody in the territory of the requested Member State shall be deducted from the period of detention which the person concerned is or will be obliged to undergo in the territory of the requesting Member State.
5. Articles 11(2) and (3), 12 and 20 of the European Mutual Assistance Convention and Articles 33, 35 and 46 of the Benelux Treaty shall apply.
6. Each Member State may declare when giving the notification provided for in Article 23(2) that, before reaching an agreement under paragraph 1 of this Article, the consent referred to in paragraph 3 of this Article will be required or will be required under certain conditions indicated in the declaration.

ARTICLE 10

Hearing by video conference

1. If a person is in one Member State's territory and has to be heard as a witness or expert by the judicial authorities of another Member State, the latter may, where it is not desirable or possible for the person to be heard to appear in its territory in person, request that the hearing take place by video conference, as provided for in paragraphs 2 to 8.
2. The requested Member State shall agree to the hearing by video conference provided that the use of the video conference is not contrary to its fundamental principles of law and on condition that it has the technical means to permit the hearing. If the requested Member State has no access to the technical means for video conferencing, such means may be made available to it by the requesting Member State by agreement between them.
3. Applications for a hearing by video conference shall contain, in addition to the data referred to in Article 14 of the European Mutual Assistance Convention and Article 37 of the Benelux Treaty, the reason why it is not desirable or possible for the witness or expert to attend, the name of the judicial authority and of the persons who will be conducting the hearing.
4. The judicial authority of the requested Member State shall summon the person concerned to appear in accordance with the forms laid down by its legislation.

5. With reference to hearing by video conference, the following rules shall apply:

- (a) a judicial authority of the requested Member State shall be present during the hearing, where necessary assisted by an interpreter, and shall also be responsible for ensuring both identification of the person to be heard and respect for the fundamental principles of the law of the requested Member State. If the judicial authority of the requested Member State judges that during the hearing the fundamental principles of the law of the requested Member State are infringed, it shall immediately take the necessary measures for the continuation of the hearing in accordance with the said principles;
- (b) measures extending to the protection of the person to be heard may be agreed between the competent authorities of the requesting and the requested Member States;
- (c) the hearing shall be conducted directly by, or under the direction of, the judicial authority of the requesting Member State in accordance with its own laws;
- (d) at the request of the requesting Member State the requested Member State shall ensure that the person to be heard is assisted by an interpreter, if necessary;
- (e) the person to be heard may claim the right not to testify which would accrue to him or her under the law of either the requested or the requesting Member State;

6. Without prejudice to any measures agreed for the protection of persons, the judicial authority of the requested Member State shall on the conclusion of the hearing draw up minutes indicating the date and place of the hearing, the identity of the person heard, the identities and functions of all other persons participating in the hearing, any oaths taken and the technical conditions under which the hearing took place. The document shall be forwarded by the competent authority of the requested Member State to the competent authority of the requesting Member State.

7. The cost of establishing the video link, costs related to the servicing of the video link in the requested Member State, the remuneration of interpreters provided by it and allowances to witnesses and experts and their travelling expenses in the requested Member State shall be refunded by the requesting Member State to the requested Member State, unless the latter waives the refunding of all or some of these expenses.

8. Each Member State shall take the necessary measures to ensure that its national law applies where witnesses or experts are being heard within its territory in accordance with this Article and refuse to testify when under an obligation to testify or do not testify according to the truth, in the same way as if the hearing took place in a national procedure.

9. Member States may at their discretion also apply the provisions of this Article, where appropriate and with the agreement of their competent judicial authorities, to hearings by video conference involving an accused person. In this case, the decision to hold the video conference, and the manner in which the video conference shall be carried out, shall be subject to agreement between the Member States concerned, in accordance with their national law and relevant international instruments, including the 1950 European Convention on Human Rights.

Any Member State may, when giving its notification pursuant to Article 23(2), declare that it will not apply the first subparagraph. Such a declaration may be withdrawn at any time.

Hearings shall only be carried out with the consent of the accused person. Such rules as may prove to be necessary, with a view to the protection of the rights of accused persons, shall be adopted by the Council in a legally binding instrument.

ARTICLE 11

Hearing of witnesses and experts by telephone conference

1. If a person is in one Member State's territory and has to be heard as a witness or expert by a judicial authority of another Member State the latter may, where its national law so provides, request assistance of the former Member State to enable the hearing to take place by telephone conference, as provided for in paragraphs 2 to 5.
2. A hearing may be conducted by telephone conference only if the witness or expert agrees that the hearing take place by that method.
3. The requested Member State shall agree to the hearing by telephone conference where this is not contrary to its fundamental principles of law.

4. An application for a hearing by telephone conference shall contain, in addition to the data referred to in Article 14 of the European Convention on Mutual Assistance and Article 37 of the Benelux Treaty, the name of the judicial authority and of the persons who will be conducting the hearing and an indication that the witness or expert is willing to take part in a hearing by telephone conference.

5. The practical arrangements regarding the hearing shall be agreed between the Member States concerned. When agreeing such arrangements, the requested Member State shall undertake to:

- notify the witness or expert concerned of the time and the venue of the hearing;
- ensure the identification of the witness or expert;
- verify that the witness or expert agrees to the hearing by telephone conference.

The requested Member State may make its agreement subject, fully or in part, to the relevant provisions of Article 10(5) and (8). Unless otherwise agreed, the provisions of Article 10(7) shall apply *mutatis mutandis*.

ARTICLE 12

Controlled deliveries

1. 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.

2. 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.

3. 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.

ARTICLE 13

Joint investigation teams

1. By mutual agreement, the competent authorities of two or more Member States may set up a joint investigation team to carry out criminal investigations in one or more of the Member States setting up the team. A joint investigation team for the purposes of this Article shall be composed of members of the authorities of the Member States concerned responsible for or participating in criminal investigations and may, in particular, include judicial, police and customs officers. Where necessary, officials of international organisations or bodies may be part of the team.

A joint investigation team may in particular be set up where:

- a Member State's inquiries into serious criminal offences require difficult and demanding investigations having links with other Member States;
- a number of Member States are conducting investigations in which the circumstances of the case necessitate coordinated, concerted action in the Member States involved.

A request for the setting up of a joint investigation team may be made by any of the Member States concerned. The investigation team shall be set up in one of the Member States in which the investigations are expected to be carried out.

2. In addition to the information referred to in Article 14 of the European Convention on Mutual Assistance in Criminal Matters and Article 37 of the relevant Benelux Treaty, requests for the setting up of a joint investigation team shall include proposals for the composition of the team.

3. A joint investigation team shall operate in the territory of the Member States setting up the team under the following general conditions:

- (a) it shall be set up only for a specific purpose and for a limited period;
- (b) the team shall be headed by an official from the Member State in which the team is operating. This official shall coordinate and lead the activities of the team in the territory of that Member State;

- (c) the Member State in which the team operates shall make the necessary organisational arrangements for it to do so.
4. The officials seconded to a joint investigation team by a Member State shall be bound by the law of the Member State in which the team operates. They shall come under the leadership of the team's head appointed in accordance with paragraph 3(b) and be required to follow his instructions.
5. The seconded officials shall have the following rights within the territory of the State of operation:
- (a) they shall be entitled to be present in the State of operation in the course of the investigation team's investigations;
- (b) by agreement between the Member States concerned, and in accordance with the law of the State of operation, they may in individual cases be entrusted with the task of taking criminal procedural steps. The State of operation may lay down conditions regarding the procedural steps to be taken, including for example that a member of that State's law enforcement authorities is present when the steps are taken in order to ensure compliance with its law.
6. When a joint investigation team is set up, the Member States involved may agree on further arrangements for its operation. They may in particular agree that requests for mutual assistance relating to the team's investigations, by way of derogation from Article 6 of the Convention, can be submitted by officials seconded to the team directly to the competent authorities in the State of operation.

7. A seconded official may for the purpose of a criminal investigation supply information lawfully available to him to the joint investigation team in accordance with Article 7(1) and (2). The use of such information in the State of operation shall be governed by Article 7(3).

8. Information lawfully obtained by an official while forming part of a joint investigation team based in another Member State may be used for the purposes of criminal investigations in the seconding Member State under the same conditions as if the information had been obtained by way of mutual assistance.

9. This Article shall be without prejudice to any other provisions or arrangements on the setting up or operation of joint investigation teams.

ARTICLE 14

Covert investigations

1. The requesting and the requested Member State may agree to assist one another for the operation of investigations into crime by officers acting under covert or false identity (covert investigations).

2. The decision on the request is taken in each individual case by the competent authorities of the requested Member State with due regard to its national law and procedures. The duration of the covert investigation, the detailed conditions, the legal status of the officers concerned and liability for any offence committed or damage caused during covert investigations shall be agreed between the Member States with due regard to their national law and procedures.

3. Covert investigations shall take place in accordance with the national law and procedures of the Member State on the territory of which the covert investigation takes place. The Member States involved shall cooperate on the preparation and supervision of the covert investigation, including arrangements for the security of the officers acting under covert or false identity.

4. Any Member State may when giving the notification provided for in Article 23(2) declare that it is not bound by this Article. Such a declaration may be withdrawn at any time.

TITLE III

INTERCEPTION OF TELECOMMUNICATIONS

ARTICLE 15

Authorities competent to order interception of telecommunications

For the purpose of the application of the provisions of Articles 16, 17 and 18, "competent authority" shall mean a judicial authority, or, where judicial authorities have no competence in this area, an equivalent competent authority, specified pursuant to Article 21(1)(e) and acting in the framework of a criminal investigation.

ARTICLE 16

Requests for interception of telecommunications

1. For the purpose of a criminal investigation, a competent authority in any Member State (the requesting Member State) may, in accordance with the requirements of its domestic law, make a request to a competent authority in another Member State (the requested Member State) for:

- (a) the interception and immediate transmission to the requesting Member State of telecommunications; or
- (b) the interception, recording and subsequent transmission to the requesting Member State of the recording of telecommunications.

2. Requests under paragraph 1 may be made in relation to the use of means of telecommunications by the subject of the interception, if this subject is present:

- (a) in the requesting Member State, and where the requesting Member State needs the technical assistance of the requested Member State to intercept his communications;
- (b) in the requested Member State, and where his communications can be intercepted in that Member State;
- (c) in a third Member State, which has been informed pursuant to Article 18(1)(a), and where the requesting Member State needs the technical assistance of the requested Member State to intercept his communications.

3. By way of derogation from Article 14 of the European Mutual Assistance Convention and Article 37 of the Benelux Treaty, requests under this Article shall include the following:

- (a) an indication of the authority making the request;
- (b) confirmation that a lawful interception order or warrant has been issued in connection with a criminal investigation;
- (c) information for the purpose of identifying the subject of the interception;
- (d) an indication of the criminal conduct under investigation;
- (e) the desired duration of the interception; and
- (f) if possible, the provision of sufficient technical data to ensure that the request can be met (in particular the relevant network connection number).

4. In the case of a request pursuant to paragraph 2(b), a request shall also include a summary of the facts. The requested Member State may require any further information necessary to enable the requested Member State to decide whether the request would be granted if it had been made by a national authority of that Member State.

5. The requested Member State undertakes to comply with requests under paragraph 1(a):
- (a) in the case of a request pursuant to paragraph 2(a) and 2(c), on being provided with the information in paragraph 3. The requested Member State may allow the interception to proceed without further formality;
 - (b) in the case of a request pursuant to paragraph 2(b), on being provided with the information in paragraphs 3 and 4 and where the request would be granted if it had been made by a national authority of that Member State. The requested Member State may make its consent subject to any conditions which it would impose had the request been made by one of its own national authorities.
6. Where immediate transmission is not possible, the requested Member State undertakes to comply with requests under paragraph 1(b) on being provided with the information in paragraphs 3 and 4 and where the request would be granted if it had been made by a national authority of that Member State. The requested Member State may make its consent subject to any condition which it would impose had the request been made by one of its own national authorities.
7. Any Member State may declare when giving the notification provided for in Article 23(2) that it is bound by paragraph 6 only when it is unable to provide immediate transmission. In this case the other Member States may apply the principle of reciprocity.

8. When making a request under paragraph 1(b), the requesting Member State may, where it has a particular reason to do so, also request a transcription of the recording. The requested Member State shall consider such requests in accordance with its national law and procedures.

9. The Member State receiving the information provided under paragraphs 3 and 4 shall keep that information confidential in accordance with its national law.

ARTICLE 17

Interceptions of subjects on national territory by the use of service providers

1. For the purposes of lawful interceptions of telecommunications, Member States shall permit the international telecommunication systems operating on their territory and providing telecommunication services in more than one Member State to be directly accessible, by the use of the service providers present on their territory, to the other Member States.

2. In the case provided for in paragraph 1, the competent authorities of a Member State, for the purposes of a criminal investigation and in accordance with the applicable national law, shall carry out the interception on the condition that the subject of the interception is present in that Member State.

3. Paragraph 2 shall also apply where the competent authority of a Member State makes a request to another Member State, pursuant to Article 16(2)(b), for the interception of a person present on the territory of that other State.

4. Where direct access is not used, the Member State hosting the international telecommunications systems provided for in paragraph 1 shall reply to the request for assistance using the ordinary forms. In that case, the reasons for refusal provided for in Article 2 of the European Mutual Assistance Convention shall be indicated.

ARTICLE 18

Interception of subjects on the territory of another Member State without technical assistance of this member state

1. Where for the purpose of a criminal investigation, the interception of telecommunications is authorised by the competent authority of one Member State, and the telecommunication address of the subject specified in the interception order is being used on the territory of another Member State from which no technical assistance is needed to carry out the interception, the first mentioned Member State shall inform the other Member State on the interception:

- (a) prior to the interception in cases where it knows when ordering the interception that the subject is on the territory of that Member State;
- (b) immediately after it knows that the subject of the interception is on the territory of that Member State in other cases.

2. The information to be provided by the intercepting Member State includes:

- (a) an indication of the authority ordering the interception;
- (b) confirmation that a lawful interception order or warrant has been issued in connection with a criminal investigation;
- (c) information for the purpose of identifying the subject of the interception;
- (d) an indication of the criminal conduct under investigation; and
- (e) the expected duration of the interception.

3. Upon receipt of the information listed in paragraph 2, the competent authority of the Member State concerned:

- (a) may contact the competent authority in the intercepting Member State in order to coordinate any criminal investigations already conducted by it relating to the subject of the interception with the investigation conducted by the intercepting Member State;

- (b) shall have 96 hours in which to agree to the interception from the time at which it was informed by the intercepting Member State. If no reply is received within that period, the intercepting State must immediately suspend the interception, and may not use the material collected as evidence in criminal proceedings from the time at which it became aware that the subject was on the territory of the State visited. The absence of a reply from the State visited shall be considered to constitute a refusal and must subsequently give rise to a written statement of reasons, based on one of the reasons mentioned in subparagraph (d);
- (c) may request from the competent authority in the intercepting Member State a summary of the facts of the case and any further information. In that event a further period of 96 hours shall commence from the time when that request is made by the State visited and the provisions of subparagraph (b) shall apply *mutatis mutandis*;
- (d) may require the interception not to be carried out or to be interrupted where the interception would not be permissible pursuant to its national law or for the reasons specified in Article 2 of the European Mutual Assistance Convention. Where a Member State imposes such a requirement it must give reasons for its decision, in writing; it may also require the intercepting Member State not to use the intercepted material from the time at which it is established that the subject was on its territory.

Member States shall take the measures necessary to ensure that a reply can be given within the 96-hour period.

4. The Member State receiving the information provided under paragraph 2 shall keep that information confidential in accordance with its national law.
5. Where the intercepting Member State is of the opinion that the information disclosed by paragraph 2 is of a particularly sensitive nature, it may be transmitted to the competent authority through a specific authority where that has been agreed on a bilateral basis between the Member States concerned.
6. Any Member State may declare, when giving its notification under Article 23(2), or at any time thereafter, that it will not be necessary to provide it with the information on interceptions as envisaged in this Article.

ARTICLE 19

Responsibility for charges made by telecommunications operators

Costs which are incurred by telecommunications operators or service providers in executing requests pursuant to Article 16 shall be borne by the requesting Member State.

ARTICLE 20

Bilateral arrangements

Nothing in this Title shall preclude any bilateral or multilateral arrangements between Member States for the purpose of facilitating the exploitation of present and future technical possibilities regarding interception of telecommunications.

TITLE IV

FINAL PROVISIONS

ARTICLE 21

Statements

1. When giving the notification referred to in Article 23(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:
 - (a) the competent administrative authorities or services within the meaning of Article 2(1), if any,
 - (b) one or more central authorities for the purposes of applying Article 6 as well as the authorities competent to deal with the requests referred to in Article 6(8)(b),
 - (c) the police or customs authorities competent for the purposes of Article 6(5), if any,
 - (d) the administrative authorities competent for the purposes of Article 6(6), if any, and
 - (e) the authority or authorities competent for the purposes of the application of Articles 16 and 17 and Article 18(1) to (4).

2. Statements made in accordance with paragraph 1 may be amended in whole or in part at any time by the same procedure.

ARTICLE 22

Reservations

No reservations may be entered in respect of this Convention, other than those for which it makes express provision.

ARTICLE 23

Entry into force

1. This Convention shall be subject to adoption by the Member States in accordance with their respective constitutional requirements.
2. Member States shall notify the Secretary-General of the Council of the European Union of the completion of the constitutional procedures for the adoption of this Convention.
3. This Convention shall enter into force ninety days after the notification referred to in paragraph 2 by the State, Member of the European Union at the time of adoption by the Council of the Act establishing this Convention, which is last to complete that formality.

4. Until this Convention enters into force, any Member State may, when giving the notification referred to in paragraph 2 or at any other time, declare that as far as it is concerned this Convention shall apply to its relations with Member States which have made the same declaration. Such declarations shall take effect ninety days after the date of deposit thereof.

5. This Convention shall apply only to requests for mutual assistance submitted after the date on which it enters into force or is applied as between the requested Member State and the requesting Member State.

ARTICLE 24

Accession of new Member States

1. This Convention shall be open to accession by any State which becomes a member of the European Union.

2. The text of this Convention in the language of the acceding State, drawn up by the Council of the European Union, shall be authentic.

3. The instruments of accession shall be deposited with the depositary.

4. This Convention shall enter into force with respect to any State which accedes to it ninety days after the deposit of its instrument of accession or on the date of entry into force of this Convention if it has not already entered into force at the time of expiry of the said period of ninety days.

5. Where this Convention is not yet in force at the time of the deposit of their instrument of accession, Article 23(4) shall apply to acceding Member States.

ARTICLE 25

Depositary

1. The Secretary-General of the Council of the European Union shall act as depositary of this Convention.
2. The depositary shall publish in the Official Journal of the European Communities information on the progress of adoptions and accessions, statements and reservations and also any other notification concerning this Convention.

Done at on in a single original in the Danish, Dutch, English, Finnish, French, German, Greek, Irish, Italian, Portuguese, Spanish and Swedish languages, all texts being equally authentic, such original being deposited in the archives of the General Secretariat of the Council of the European Union.