



**EUROPEAN UNION
THE COUNCIL**

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SEMDOC

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NOTE

from :	Presidency
to :	Coreper
Subject :	Draft Convention on mutual assistance in criminal matters - procedures to follow regarding publication of the draft in the Official Journal and consultation of the European Parliament

I INTRODUCTION

Article 34(2)(d) of the TEU provides that the Council may establish conventions acting unanimously on the initiative of any Member State or of the Commission. Article 39(1) provides that the Council shall consult the European Parliament before adopting any such Convention. The Council may lay down a time limit for the European Parliament to deliver its opinion. The time limit shall not be less than three months.

Unless otherwise decided by Coreper or Council, the General Secretary publishes the initiative of a Member State in the Official Journal in conformity with Article 15(2)(b) of the Council Rules of procedure. Before that the initiative is edited by the legal linguists (see doc. 6305/99 JUR 79).

The consultation of the European Parliament may be decided

- by Coreper pursuant to Article 17(4)(h) of the Rules of Procedure, or
- on the initiative of the Presidency, by decision of the Council in streamlined written procedure pursuant to Article 10(5) of the Rules of Procedure.

II SITUATION CONCERNING THE DRAFT CONVENTION ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS

The draft Convention has been negotiated for some years now (since the Italian Presidency, second half 1996). The present text is a result of negotiations on several proposals made on different subjects by different delegations during this period.

All delegations have various problems with the text as it stands, and it would probably not be appropriate for any delegation to put forward that text as a formal proposal from its country to the Council at this stage. The Presidency is of the view that some degree of flexibility may apply in a transitional period regarding transfer of already existing drafts from the former system to the new Amsterdam procedures in order to avoid delays concerning the adoption of instruments. The Presidency is in particular of the view that at this stage a formal initiative of a Member State or the Commission is not necessary for the purpose of consulting the European Parliament on the draft Convention. However, a recital will indeed have to be introduced at a later stage before the final adoption of the text along the following lines: "Having regard to the initiative of [one or more Member States and/or the Commission, to be specified]".

For the purpose of further proceedings, the Presidency has invited the Council Secretariat to establish a legal linguist version of the draft on the basis of documents 8560/99 JUSTPEN 39 and 9191/99 COPEN 6 CATS 8. The text of the documents referred to is only to some extent subject to agreement. A number of provisions, in particular those on interception of telecommunications, will have to be further examined. However, the said text is in the view of the Presidency a reasonable basis for further proceedings. Where the text contains alternatives, a choice has been made. The edited version is set out in document 9636/99 COPEN 11.

III PROCEDURE

Having consulted the Legal Service on the matter, the Presidency proposes the following procedure:

a. Publication of the draft Convention

Coreper takes note that the Secretary General has the intention to publish the text of document 9636/99 COPEN 11 in the Official Journal pursuant to Article 15(2)(b) of the Council's Rules of Procedure.

b. Consultation of the European Parliament

On the initiative of the Presidency, the Council decides to consult the European Parliament on that text pursuant to Article 39(1) of the TEU following the streamlined written procedure provided in Article 10(5) of the Council's Rules of Procedure.

As indicated above, the Council may lay down a time limit of at least three months within which the European Parliament shall deliver its opinion. The period within which a reply should be given should in the view of the Presidency at the earliest start running from the first plenary session of the newly elected parliament (20-23 July 1999). The Presidency also considers that it should be taken into account that in general the parliament is not active in August and that the text on which it is to be consulted is highly legal and technical.

The Presidency therefore proposes to ask the Parliament to deliver its opinion before the 15 November 1999.

The Parliament should be informed that a part of the draft is related to the Schengen acquis and will be negotiated under the appropriate procedures (COMIX etc).

IV CONCLUSION

Coreper is invited to agree on the procedure described under point III above.