



EUROPEAN UNION
THE COUNCIL

Brussels, 17 September 1999

10938/99

LIMITE

COPEN 35

NOTE

from :	Presidency
to :	Working Party on Cooperation in Criminal Matters
No. prev. doc.:	10937/99 COPEN 34
Subject :	Draft Convention on mutual assistance in criminal matters between the Member States of the European Union - interception of telecommunications

Following the examination of Article 18(3) of the draft Convention on mutual assistance in the Article 36 Committee on 9 and 10 September 1999, the Presidency has elaborated the attached revised version of that Article for the purpose of further proceedings.

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Article 18(3)¹

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 it was informed by the intercepting Member. If no reply is received within that period, the intercepting Member State **shall interrupt** the interception and may not use the intercepted material as evidence in **court** [criminal] proceedings from the time it became aware that the subject was on the territory of the visited Member State. The absence of a reply from the visited **Member** State shall be considered to constitute a refusal and **shall** give rise to a written statement of reasons, based on one of the reasons mentioned in the following subparagraph d).
- c) The visited Member State 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 case a further period of 96 hours shall commence from the time the request is made and the provisions of the subparagraph b) shall apply mutatis mutandis.
- d) may require the interception 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 shall give reasons for its decision, in writing. It may also require that the intercepting Member State may not use the intercepted material **as evidence in court [criminal] proceedings** from the time **the intercepting Member State became aware that the subject was on the territory of the visited Member State.**

¹ Amendments as compared with 9636/99 COPEN 11 are indicated.

Where the visited Member State imposes a requirement not to use the intercepted material as evidence in court [criminal] proceedings, the intercepting Member State is bound to this requirement, unless the rights of the accused person require the use of the material.

Member States shall take the necessary measures to ensure that a reply can be given within the 96-hour period. **[To this end they shall designate contact points (to be on duty twenty-four hours a day) under Article 21(e).]**
