



**EUROPEAN UNION  
THE COUNCIL**

**Brussels, 9 July 1999**

**9844/99**

**LIMITE**

**COPEN 18**

**OUTCOME OF PROCEEDINGS**

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of : Working Party on Cooperation in Criminal Matters  
on : 3 June 1999

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**1. Adoption of the agenda**

The agenda set out in telex n° 2450 of 26 May 1999 was adopted.

**2. Follow-up to the JHA Council on 27 and 28 May 1999  
(doc. 8560/99 JUSTPEN 39)**

The Chairman briefed the Working Party on the discussion which had taken place in relation to the interception of telecommunications at the meeting of the JHA Council on 27 and 28 May 1999. While some progress had been made in that area, it had not been significant and the Council had decided that the outstanding issues should be the subject of a special meeting of the Article 36 Committee.

In addition to undertaking an extensive debate on the future of the judicial system of the European Union, the Council had approved the final report on the telecommunications

network for the European Judicial Network (EJN). The report had outlined how the telecom system envisaged in the Joint Action establishing the EJN should be set up, on the basis of a pilot project. The Council Secretariat indicated that the pilot project was expected to commence in the autumn. Furthermore, practical information relating to judicial cooperation was available on the EJN website and a CD Rom with relevant documents was being made available.

3. **Joint investigation teams**  
(doc. 8560/99 JUSTPEN 39)

The Working Party on mutual assistance in criminal matters examined at its meeting on 3 June 1999 a part of Article 10a on Joint investigation teams of the Draft Convention on mutual assistance in criminal matters between the Member States of the European Union, as standing in document 8560/99 JUSTPEN 39.

The general parliamentary scrutiny reservation entered by the United Kingdom delegation and the general scrutiny reservations entered by several delegations (Belgian, French, Danish, Swedish and Finnish delegations) were maintained.

On request from of the Belgian delegation, it was examined whether it was appropriate to adopt a provision on joint teams within the framework of mutual assistance rather than within the framework of police cooperation. The Belgian delegation referred in this context to its previous comments. The issue needs to be examined further at a future meeting.

The French delegation was in favour of introducing a reference to the European Judicial Network.

The provisions of Article 10 a, points 1 to 5, were examined. The text resulting from the proceedings is set out in the Annex.

4. **Preparation of the meeting between experts on mutual assistance in criminal matters of the EU and of the USA and Canada on 3 June 1999**

The Working Group discussed the items which would be considered at the meeting with the experts from the USA and Canada and arrangements were made for presentations to be made by delegations in the course of the meeting.

**5. Consequences of the entry into force of the Treaty of Amsterdam, and the Association with Iceland and Norway pursuant to the Schengen Protocol, for the draft Convention on Mutual Assistance in Criminal Matters**

doc. 8380/99 JUR 186 JUSTPEN 37

The Council Legal Service briefly introduced the written comments it had provided in document 8380/99 JUR 186 JUSTPEN 37 at the request of the Working Party. Those comments confirmed the oral observations made by the Legal Service at the previous meeting of the Working Party. In addition reference was made to the fact that the Accession Agreement with Iceland and Norway concerning the application, implementation and further development of the Schengen acquis, had recently been signed and had, accordingly, entered into force provisionally. It was expected that the Agreement would be ratified by both Iceland and Norway by the autumn. In response to a query concerning the meaning of the term "developing the Schengen acquis" in the context of relations with Iceland and Norway, the Legal Service referred to the decision of the Council of 17 May 1999 on certain arrangements for the application of the Agreement with Iceland and Norway and indicated that it was a matter for the Working Party to determine what was or was not such a development with reference to the draft EU convention. When that determination had been made, the relevant provisions would have to be addressed with Iceland and Norway in the Mixed Committee. In the course of further discussion the Legal Service also said it was possible that Iceland and Norway would enter into an agreement concerning the other provisions of the convention but this was not a legal requirement on their part. One delegation mentioned that difficulties might arise in that regard because some of the provisions of the proposed convention were more restrictive than the Schengen arrangements - e.g. in the area of the channels of communication to be used for requests.

**6. Other Business**

No comments.

Article 10a<sup>1</sup>**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 <sup>2</sup>may be part of the team<sup>3</sup>.

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 into serious criminal offences in which the circumstances of the case necessitate co-ordinated, concerted action in the Member States involved;

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<sup>1</sup> Most delegations were in principle, and without prejudice to detailed comments on the text proposed, in favour of a provision on joint teams. However, a number of delegations have at this stage entered a general parliamentary scrutiny reservation (United Kingdom delegation) or a general scrutiny reservation (Belgian, Danish, Greek, French, Luxembourg, Irish, Spanish, Swedish and Finnish delegations) on the proposal. Some delegations in particular expressed concern that the proceedings in this area should be in line with the relevant provisions of the Amsterdam Treaty.

<sup>2</sup> e.g. Europol, UCLAF/OLAF, American Drug Agency, European Judicial Network.

<sup>3</sup> Alternative proposal: "Where necessary and appropriate, officials which may make the investigations of the team more effective may be part of the team, provided that the competent authorities of the Member States concerned specifically agree on the terms of their participation".

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 lie.<sup>1</sup>

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<sup>2</sup>.
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 co-ordinated by one or several representatives of the authority or authorities competent<sup>3</sup>, under national law<sup>4</sup>, from the Member State in which the team is operating. The representative shall ensure that the activities of the team in the territory of that Member State are carried out effectively<sup>5</sup>.
  - (c) the Member State in which the team operates shall make the necessary organisational arrangements for it to do so.

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<sup>1</sup> It will be examined whether the last sentence of paragraph 1 shall be included or not.

<sup>2</sup> It will be explained in the explanatory report that it is intended that the proposals for the composition of the team in particular should concern the kind of specialization needed regarding the members of the team.

<sup>3</sup> This formulation should solve the question raised by Spain about the chair of a team composed by representatives of the police forces as well as magistrates.

<sup>4</sup> This wording should solve the problem of the proofs that will be collected by a team operating in several countries, chaired by several persons following one another, to be used later on in a criminal procedure.

<sup>5</sup> It will be explained in the explanatory report that where the team is operating in more than one Member State, this implies the appointment of an officer from each of the Member States involved.

4. The law shall bind the officers seconded to a joint investigation team by a Member State 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 officers seconded 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<sup>1</sup>;
  - (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<sup>2</sup>.

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<sup>1</sup> The presence of seconded officers is submitted to the same conditions than those applicable to national officers.

<sup>2</sup> The State of operation will determine the extent of the participation of the officers seconded, which will not be allowed to undertake any initiative by their own. As an example, the State of operation will decide whether the seconded officers may ask directly questions.