EUROPEAN UNION
THE COUNCIL

Brussels, 18 July 1997 (21.08)
(OR. f)

9897/97

LIMITE

JUSTPEN 65

OUTCOME OF PROCEEDINGS

of : Working Party on Mutual Assistance in Criminal Matters

~~on: 8 and 9 July 1997~~

No. prev. doc.: 9753/97 JUSTPEN 63

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

At its meeting on 8 and 9 July 1997 the Working Party on Mutual Assistance in Criminal Matters examined Articles 1 to 5, 10 to 14 and paragraphs 1 to 3 of Article 15 of the above draft Convention on the basis of 7945/97 JUSTPEN 41.

The Chairman stressed that the draft Convention, in accordance with the Action Plan to combat organized crime approved by the Amsterdam European Council on 16 and 17 June 1997, was a major priority under the Luxembourg Presidency. He indicated that the aim of the Presidency was to reach an agreement on the draft as soon as possible and observed that the Presidency had scheduled 11 days' work on the draft for the Working Party. The outcome of the proceedings will be referred on for higher consideration and the draft will be included on the (JHA) Council agenda for December 1997.

The Austrian, Spanish, French, Irish and United Kingdom delegations entered general scrutiny reservations on the draft and the Danish delegation a general reservation pending scrutiny by Parliament. Some delegations expressed general linguistic scrutiny reservations on the text. Delegations which expressed general reservations stressed however that in principle they were in favour of the establishment of a Convention on mutual assistance.

When Article 5 was being discussed the Finnish delegation submitted the proposal on the restitution in 9725/97 JUSTPEN 62. In addition the Austrian delegation submitted the note on the possible introduction of a data protection clause set out in 9753/97 JUSTPEN 63. The Working Party agreed to examine the documents at one of its forthcoming meetings. As regards the document on data protection, the Presidency invited the Austrian delegation to specify the aspects which in its opinion should be covered, possibly in the form of a draft Article on the subject.

As regards the legal interception of telecommunications, the Netherlands delegation would present an amended text of Articles 6 to 9 on the basis of discussions on the subject at Working Party meetings on 21 and 22 May and 18 and 19 June 1997.

The draft Act (page 3), the recitals (page 4), Article 15, paragraphs 4 to 8 and Articles 16 to 20 have not yet been examined.

The text as it results from the discussion, accompanied by observations by the delegations, is set out in the Annex.

ANNEX

COUNCIL ACT
of

drawing up 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 K.3(2)(c) 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,

HAVING DECIDED that the Convention signed today by the Representatives of the Governments of the Member States of the Union, the text of which is given in the Annex, is hereby drawn up,

RECOMMENDS that it be adopted by the Member States in accordance with their respective constitutional rules.

Done at Brussels,

For the Council
The President

CONVENTION,
DRAWN UP ON THE BASIS OF ARTICLE K.3
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 of

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,

HAVE AGREED ON THE FOLLOWING PROVISIONS:

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 ([1]) 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".

2. ([2]) Paragraph 1 shall not affect the applicability of more extensive 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 reciprocal laws providing for the reciprocal application of measures of mutual assistance.

([1]) Several delegations (D/E/UK) said that it would be desirable to have the opinion of the Council Legal Service on the consequences of the draft Treaty of Amsterdam with regard to relations between the draft Convention and the Schengen Agreement.

([2]) Scrutiny reservation by the United Kingdom delegation.

Article 2

Procedures in connection with which assistance is to be provided

1. ([3]) Mutual assistance shall also be provided in connection with procedures relating to offences which, under the national law of the requesting or the requested Member State, or both, are punishable by administrative authorities, provided that an appeal against the decisions of those authorities may be made to a court which will deal with the offences as criminal matters under the national law of the relevant Member State.

2. Mutual assistance shall also be provided 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.

([3]) Scrutiny reservation by the German, Netherlands, Swedish and Portuguese delegations.

Article 3

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

1. Unless otherwise provided in this Convention, and where formalities and procedures are not contrary to the fundamental principles of law in the requested Member State, the Member States shall undertake to comply, for purposes of executing letters rogatory, with formalities and procedures expressly indicated by the requesting Member State ([4]).

2. Where the request cannot, or cannot fully, be executed in accordance with the requirements of the requesting Member State, the authorities of the requested Member State shall duly 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 the execution of the request, subject to those conditions.

([4]) The United Kingdom delegation observed that the United Kingdom had made a statement under Article 5(1), points (a) and (b), of the European Convention on Mutual Assistance and entered a reservation because the text of Article 3(1) would be incompatible with that statement. To resolve the problem, some delegations suggested that it be pointed out in the explanatory report that statements made under Article 5 of the European Convention on Mutual Assistance were not affected by Article 3.

Article 4

Searches and seizure ([5])

([5]) In accordance with point D of the report on mutual assistance, approved by the (JHA) Council in May 1997 (8191/97 JUSTPEN 46) and taking into consideration point (a) of the third paragraph of recommendation 16 of the Action Plan to combat organized crime, approved by the Amsterdam European Council in June 1997 (7421/97 JAI 14), the Working Party, at its meetings on 20 and 21 May and 18 and 19 June 1997, examined the reservations entered by the Member States under Article 5 of the European Convention on Mutual Assistance.
At those meetings some delegations were in favour of deleting all reservations entered under Article 5 of the European Convention. The reservations had apparently not however given rise to difficulties in specific instances. Furthermore some delegations expressed hesitation with regard to the possibility of deleting their reservations, in particular on Article 5(1)(a) (double criminality). On this basis it was agreed that it would not be appropriate to pursue the subject without supplementary information on the specific problems encountered.
At the meeting on 8 and 9 July 1997 the French delegation considered that it was nevertheless necessary to continue work immediately on the subject.

Article 5

Restitution ([6])

1. ([7]) 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 shall 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.

2. ([8]) In the event of any such waiver as referred to in paragraph 1, the requested Member State shall not exercise any security right or other right of recourse in respect of surrendered articles under tax or customs legislation, unless the rightful owner of the article is himself taxable on it.

([6]) The Working Party agreed to examine the Finnish proposal in 9725/97 JUSTPEN 62 at a future meeting.

([7]) The French delegation suggested that Article 6(2) of the European Convention be replaced by a provision specifying that the articles in question would be returned only at the request of the requested Member State.

([8]) Reservation on paragraph 2 by the Swedish and Finnish delegations.

Article 6 ([9])

Investigation of telecommunications

1. Requests to investigate correspondence not intended for the public by means of the telecommunications infrastructure or a telecommunications system used to provide services to the public shall at all times be based on an order to that effect from the competent authority under the national law of the requesting Member State.

2. Depending on the content of the order from the competent authority of the requesting Member State, requests as referred to in paragraph 1 shall be either for interception, recording and transcription of intercepted correspondence or for interception and direct transmission of intercepted correspondence to the requesting Member State for monitoring and for recording and transcription there.

3. Requests as referred to in paragraph 1 may be made where the subject of the investigation is:

(a) located in another Member State, using fixed or mobile terrestrial telecommunications infrastructure there, and his correspondence can only be intercepted in that Member State;

(b) located in the requesting Member State, using satellite telecommunications infrastructure there, and his correspondence can only be intercepted in another Member State;

[(c) located in another Member State, using satellite telecommunications infrastructure there and his correspondence can only be intercepted in a third Member State.]

([9]) See page 2.

4. Requests as referred to in this Article shall encompass, in addition to the data given in Article 14 of the European Mutual Assistance Convention and Article 37 of the Benelux Treaty:

(a) the existence of an order to investigate telecommunications;

(b) as accurate a description as possible of the subject of the investigation or the network connection number;

(c) the desired duration of the investigation;

(d) the type of investigation to be carried out, as referred to in paragraph 2;

(e) the technical data required for the request to be executed.

5. Where intercepted correspondence includes information the content of which a person could refuse to divulge in accordance with the national law of the requesting Member State if called upon as a witness to do so, no use shall be made of such information, which shall be destroyed.

Article 7 ([10])

Investigation of terrestrial telecommunications

1. Requests to investigate telecommunications as referred to in Article 6(3)(a) shall be submitted to the competent authority of the Member State in which the subject of the investigation is located and shall state the aim of and reason for the request.

2. The requested Member State shall refuse to execute the request if the investigation is, under the law of that Member State:

(a) inadmissible in view of the nature or non-seriousness of the offence or the personal status of the subject of investigation, or

(b) unjustified given the circumstances of the case.

3. The requested Member State may, depending on the content of the request, make execution thereof dependent upon one or more of the following conditions:

(a) that, prior to the transfer of the intercepted, recorded and transcribed correspondence to the requesting Member State, the competent authorities of the requested Member State destroy, in accordance with their national law, those parts of the correspondence which, in the light of the aim of and reason for the request, cannot be meaningful in the context of the criminal investigation for which the request has been submitted;

(b) that, after the transfer of the intercepted, recorded and transcribed correspondence or directly transmitted intercepted correspondence to the requesting Member State, the competent authorities of that Member State destroy, in accordance with their national law, those parts of the correspondence which, in the light of the aim of and reason for the request, are not meaningful in the context of the criminal investigation for which the request has been submitted;

([10]) See page 2.

(c) that, after completion of the investigation of telecommunications, the competent authorities of the requested Member State inform the holder of the network connection number and the subject of the investigation, in accordance with those authorities' national law and having due regard to the interests of the criminal investigation for which the request has been submitted, that the investigation of telecommunications has been carried out;

(d) that, after completion of the investigation of telecommunications, the competent authorities of the requesting Member State inform the holder of the network connection number and the subject of the investigation, in accordance with those authorities' national law, that the investigation of telecommunications has been carried out;

(e) that evidence contained in intercepted, recorded and transcribed correspondence or directly transmitted intercepted correspondence may not be used in the requesting Member State for purposes other than those forming the basis of the request for assistance.

Article 8 ([11])

Investigation of satellite telecommunications

1. Requests in the cases referred to in Article 6(3)(b) shall be referred to the competent authority of the Member State in the territory of which correspondence may be intercepted.

2. If the request includes intercepting and recording correspondence, the aim of and reasons for the request shall also be stated.

3. The requested Member State shall refuse a request to intercept and communicate the intercepted correspondence direct to the requesting State if there is no or insufficient evidence of the existence of an order to that effect from the competent authority of the requesting Member State.

4. The requested Member State shall refuse to execute a request to intercept and record intercepted correspondence if, under its national law, the investigation is:

(a) inadmissible in view of the nature and non-seriousness of the punishable offence or the personal status of the subject of investigation or

(b) unjustified given the circumstances of the case.

5. The requested Member State may make execution of the request to intercept and record intercepted correspondence dependent upon one or more of the following conditions:

([11]) See page 2.

(a) that, prior to the transfer of the intercepted and recorded correspondence to the requesting Member State, the competent authorities of the requested Member State destroy, in accordance with their national law, those parts of the correspondence which, in the light of the aim of and reasons for the request, cannot be meaningful in the context of the criminal investigation for which the request was made;

(b) that, after the transfer of the intercepted and recorded correspondence to the requesting Member State, the competent authorities of the requested Member State destroy, in accordance with their national law, those parts of the correspondence which, in the light of the aim of and reasons for the request, cannot be meaningful in the context of the criminal investigation for which the request was made;

(c) that, after completion of the investigation of telecommunications, the competent authorities of the requested Member State inform the holder of the networking number and the subject of the investigation, in accordance with their national law and in the light of the importance of the criminal investigation for which the request was made, that the said investigation has been carried out;

(d) that, after completion of the investigation of telecommunications, the competent authorities of the requesting Member State inform the holder of the networking number and the subject of the investigation, in accordance with their national law, that the said investigation has been carried out;

(e) that evidence contained in intercepted and recorded correspondence may not be used in the requesting Member State for purposes other than those forming the basis of the request for assistance.

Article 9 ([12])

Further discussion of the cases referred to in Article 6(3)(c) shall determine whether or not an Article developing the situation in further detail should be drawn up.

([12]) See page 2.

Article 10

Controlled deliveries ([13])

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.

4. Illicit consignments whose controlled delivery is agreed to may, with the consent of the Member States concerned, be intercepted and allowed to continue with the initial contents intact or removed or replaced in whole or in part. ([14])

([13]) Reservation by the Portuguese delegation and scrutiny reservation by the French delegation on the Article and in particular on its scope. Scrutiny reservation by the Danish delegation.
Some delegations observed that it was necessary to consider the text in the context of activities in other fora, in particular the examination of the draft Naples II Treaty, to verify that the various instruments being examined were not contradictory.

([14]) This paragraph was suggested by the Presidency on the basis of Article 11(3) of the 1988 Vienna Convention.

Article 11 ([15])

Sending and service of procedural documents

1. Each Member State shall send procedural documents intended for them directly by post to persons who are in the territory of another Member State. The postal services of the Member State receiving the consignment will undertake notification in accordance with the provisions governing similar consignments from the national authorities.

2. Procedural documents may be sent via the competent authorities of the requested Member State if the address of the person for whom the document is intended is unknown or uncertain and if the requesting Member State requires proof other than proof that can be obtained by post of the service of the document on the addressee.

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 one 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 its rights and obligations concerning the document.

([15]) The Presidency drew up this amended text of Article 11 on the basis of comments made by delegations with a view to future discussions.
The Presidency suggested that the explanatory report give additional information on the contents of the report referred to in Article 11(4). The report could draw on Article 11(4) and (5) of 7945/97 JUSTPEN 41.

5. Articles 8, 9 and 12 of the European Convention on Mutual Assistance and Article 32 and 35 of the Benelux Treaty shall apply as regards documents sent by post.

6. Paragraph 3 shall also apply to the report referred to in paragraph 4.

Article 12 ([16])

Hearing by video conference and by telephone

1. If it is desirable for a person in one Member State to be heard as a witness or expert by the judicial authorities of another Member State but it is not desirable or possible for the person concerned to appear in that Member State in person, the hearing may take place by video conference as provided for in paragraphs 2 to 9 or by telephone as provided for in paragraph 10.

2. The judicial authorities of the Member State wishing to hear the person by video conference shall refer an application for a video conference hearing to the judicial authorities of the Member State in which the person is located.

2a The requested Member State will agree to the hearing by video conference provided that the use of the video conference is not in conflict with its own laws and on condition that it has the technical means to permit the hearing.

3. If the requested Member State has no access to the technical means for video conferencing, they may be made available to it by the requesting Member State by agreement between them.

4. Applications as referred to in paragraph 2 shall encompass, in addition to the data referred to in Article 14 of the European Convention on Mutual Assistance and Article 37 of the Benelux Treaty, both the name of the authority and the persons who will be conducting the hearing and the reasons for requesting the hearing. ([17])

([16]) Article 12 is the subject of:
- a general reservation by the Greek and Danish delegations, and
- a reservation by the Austrian and Portuguese delegations which maintained that the consent of the person to be heard should be obtained as a prior condition for a hearing by video conference.

The text was amended by the Presidency on the basis of delegations' comments with a view to future discussions.

The new paragraph 2a corresponds to the second subparagraph of Article 6(1) of 12737/96 JUSTPEN 154.

The Swedish proposal in 9184/97 JUSTPEN 57 (hearing by telephone) has been incorporated into the text (paragraphs 1 and 10).

([17]) The text was amended in the light of comments by the German delegation.

5. (...) ([18])

6. 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 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 ([19]);

(b) ([20]) 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 (...). The measures may include the implementation of the requesting Member State's legislation on protection of the persons to be heard;

(c) the hearing shall be conducted directly by 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) (...)

(f) ([21]) the person to be heard may claim the right not to testify which would accrue to him under the legislation of either the requested or the requesting Member State; ([22])

([18]) Several delegations considered that paragraph 5 was superfluous in the light of Article 3. On this basis paragraph 5 was deleted.
([19]) The text has been amended in the light of comments by the German delegation.
([20]) Reservations by some delegations (DK/FIN/UK/E) on point (b).
([21]) Referring to its note in 9683/96 JUSTPEN 114, the German delegation, supported by the Finnish delegation, requested the introduction of more detailed provisions in the matter of the rights of witnesses.
([22]) The Luxembourg delegation suggested adding the following words: "or of any Member State whose legislation would be applicable by reason of his legal situation or profession.".

(g) (...)

7. ([23]) On conclusion of the hearing, the judicial authority of the requested Member State shall 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 present at 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.

8. Expenditure arising from the video conference shall be charged to the requesting Member State (...) unless the Member States concerned decide otherwise by mutual agreement. In special cases or in the event of urgency, the requesting Member State may ask the requested Member State to advance the amount necessary. ([24])

9. ([25]) Each Member State shall take the necessary steps to ensure that intentional false statements made in their territory by persons whether placed under oath or pledge or not in the context of this Article's application are punishable in the same way as similar false statements made in the context of a national judicial procedure.

10. ([26]) The judicial authorities of the Member State wishing to hear a person by telephone may, after having notified the competent authorities of the Member State in which the person is located, summon that person to appear for that purpose in the requested Member State.

The hearing may not take place unless the person concerned voluntarily agrees to be heard. Paragraph 6(b) to (f) and paragraph 9 shall apply. Paragraph 6(a) shall apply if required by the requesting Member State.

([23]) Text proposed by the Presidency.
([24]) Scrutiny reservation by the Spanish delegation on the final sentence of paragraph 8.
([25]) Scrutiny reservation by the Finnish and Swedish delegations.
([26]) Scrutiny reservation by several delegations on paragraph 10.

Article 13

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 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. The provisions in Articles 11(2) and (3), 12 and 20 of the European Convention on Mutual Assistance and in 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 18(2) that before reaching an agreement under paragraph 1, the consent referred to in paragraph 3 will be required or will be required under certain conditions indicated in the declaration.

Article 14 ([27])

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 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.

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.

([27]) Scrutiny reservation by some delegations (D/A/S).

Article 15 ([28])

Requests for mutual assistance

1. Requests for mutual assistance and the communications referred to in Article 14 shall as far as possible 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.

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

– between a central authority of a Member State and a central authority of another Member State, or

– between a judicial authority of one Member State and a central authority of another Member State.

2. (...) ([29])

3. (...).

([28]) The Working Party held an initial discussion on Article 15. Several delegations (D/A/E/B/NL) stressed that they were in favour of a maximum of direct contacts between the judicial authorities of the Member States. Other delegations (including DK/UK/IRL/FIN) considered that the system should be more flexible than the current text allowed.
The Presidency proposed the amended paragraph 1 and paragraph 1a as the basis for a future discussion. Paragraph 1a corresponds to Article 4(2) of 12737/96 JUSTPEN 154.
The United Kingdom delegation proposed the following text:
"Requests for mutual assistance shall be made directly between the competent authorities indicated in the statements made in accordance with Article 16 subject to the conditions specified in those statements".

([29]) The Danish and Italian delegations would have preferred to retain the principle of paragraph 2 which obliged the authorities responsible for carrying out a request for mutual assistance to keep the requesting Member State informed of progress.

4. 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 other body set up on the basis of Article K.3 of the Treaty on European Union.

5. 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 Convention on Mutual Assistance in Criminal Matters and Article 42 of the Benelux Treaty may be the subject of direct communications between the competent judicial authorities.

6. Paragraph 1 shall apply to requests for controlled deliveries, as referred to in Article 10. Where the competent authority is a judicial authority in one Member State, and a police or customs authority in the other, requests shall be made and answered directly between those authorities.

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

[(a) requests for a hearing by video conference, as referred to in Article 12;]

(b) requests for temporary transfer or transit of persons held in custody as referred to in Article 13 of this Convention, in Article 11 of the European Convention on Mutual Assistance and in Article 43 of the Benelux Treaty;

(c) notices of judgments as referred to in Article 22 of the European Convention on Mutual Assistance and Article 43 of the Benelux Treaty.

8. Each Member State shall designate one or more central authorities for the purposes of applying this Article. They shall announce this choice and any change to it in a statement to be sent to the depositary.

Article 16

Statements

When giving the notification referred to in Article 18, each Member State shall make a statement naming:

(a) the competent government authorities or services within the meaning of Article 2(1),

(b) the other authorities competent to apply this Convention where not already indicated in the European Convention on Mutual Assistance in Criminal Matters and the Benelux Treaty, and

(c) the list of procedural documents which may be sent directly by post.

Article 17

Reservations

Reservations against this Convention are not permitted, with the exception of that referred to in Article 15(3).

Article 18

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 drawing up 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 that 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 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 19

Accession of new Member States

1. This Convention shall be open to accession by any State that 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 that 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 9(4) shall apply to acceding Member States.

Article 20

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, declarations 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.