

11173/98

LIMITE

JUSTPEN 87

NOTE

from : Presidency

to : COREPER/Council

No. prev. doc.: 10702/98 JUSTPEN 79

Subject: Draft convention on Mutual Assistance in Criminal Matters between the Member States of the European Union
- Interception of telecommunications

The 1997 Action Plan to combat organized crime, approved by the Amsterdam European Council, states in its recommendation 16 that the above draft Convention should be finalized by the middle of 1998. Political agreement has been reached on a substantial part of the draft. However, it has not been possible to meet the deadline as certain particularly difficult questions still remain unresolved. The latest document showing the state of affairs concerning the draft as a whole is document 10702/98 JUSTPEN 79.

Some of the most difficult unresolved questions concern the provisions on interception of telecommunications in Articles 12-14 of the draft. The said provisions are designed to cover telecommunications in general, including both traditional networks, GSM networks and future international satellite based networks.

The characteristics of the future satellite based networks imply a need for cooperation between Member States regarding interception of telecommunications in a so far unknown technical framework. One of the satellite telecommunications networks (Iridium) is scheduled to start operating by the end of September 1998, and others are expected to follow in the near future. It is therefore generally acknowledged by delegations that there is an urgent need for provisions on cooperation regarding interception of satellite telecommunications.

The K.4 Committee discussed at its meeting on 14 September 1998 which technical approach should be followed in relation to interception of satellite telecommunications.

The basic features of the global networks which will come in operation involve a number of satellites and a number of ground stations. In the light of information provided by experts to the Working Party on mutual assistance in criminal matters, the draft provisions have so far been based on the assumption that the assistance of the country in which the relevant ground station is situated was always necessary. However, information provided recently by the Iridium satellite telecommunications network, which will start operating by the end of September 1998, shows that another option is available technically. Iridium has a ground station in Italy and will have at least one service provider in each Member State responsible for the contact to local clients. It is technically possible to provide that interception may be carried out by remote control by these service providers on request.

Several delegations of the K.4 Committee thought that, from an operational point of view, a system making use of these possibilities may be preferable to a system, where interception technically may only be carried out in the ground station country. This option would in particular have the advantage that local authorities could carry out the technical operations necessary for receiving the signals intercepted directly with a service provider on their own territory in their own language rather than to go through perhaps difficult and time-consuming procedures with the ground station country.

This technical set-up (the service provider solution) would of course in no way preclude the operation of provisions on the necessary legal basis for interception and on obligations to inform other Member States and to refrain from intercepting or to stop ongoing interception in certain circumstances.

If the service provider solution was adopted, it would be necessary to revise the present text accordingly.

The service provider solution would imply that there would be no need for technical assistance from the ground station country to intercept. The Presidency proposes that under these circumstances there would be no need to involve the ground station country except in cases where the target for the interception is in that country.

Irrespective of which solution is chosen, it is necessary to include appropriate provisions on continued interception where a target moves from one Member State to another and on interception of a target present in another Member State than the Member State interested in the interception.

In addition, no matter what solution is adopted, appropriate measures should be taken to ensure that all the operators of satellite telecommunications systems are ready to provide the technical assistance necessary for the purpose of interception.

The Coreper/Council is on this basis invited to:

- agree to the service provider solution;
- agree that when using that solution the ground station country does not need to be involved except in cases where the target of the interception is in or moves to that country;
- agree that also when using that solution the convention must include appropriate rules on continued interception for cases where a target moves from one Member State to another and on interception for cases where the target is in another Member State before the interception starts;
- instruct the Working Party
 - to revise the present draft accordingly;
 - to examine how it can be ensured that all operators of satellite telecommunications will be ready to provide the technical assistance necessary for the operation of the provisions on interception.