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REPORT

on the initiative of the French Republic with a view to adopting a Convention on improving mutual assistance in criminal matters, in particular in the area of combating organised crime, laundering of the proceeds from crime and financial crime

(10213/2000 – C5-0394/2000 – 2000/0815(CNS))

Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

Rapporteur: Martine Roure

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission)

CONTENTS

	Page
PROCEDURAL PAGE	4
LEGISLATIVE PROPOSAL	5
DRAFT LEGISLATIVE RESOLUTION	8
EXPLANATORY STATEMENT	9

PROCEDURAL PAGE

By letter of 27 July 2000 the Council consulted Parliament, pursuant to Article 39(1) of the EU Treaty, on the initiative of the French Republic with a view to adopting a Convention on improving mutual assistance in criminal matters, in particular in the area of combating organised crime, laundering of the proceeds from crime and financial crime (10213/2000 - 2000/0815 (CNS)).

At the sitting of 4 September 2000 the President of Parliament announced that she had referred this initiative to the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs as the committee responsible (C5-0394/2000).

The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs had appointed Martine Roure rapporteur at its meeting of 29 August 2000.

It considered the initiative of the French Republic and the draft report at its meetings of 13-14 September, 10-12 October and 23-24 October 2000.

At the last meeting it adopted the draft legislative resolution by 27 votes to 1, with 4 abstentions.

The following were present for the vote: Graham R. Watson, chairman; Robert J.E. Evans and Bernd Posselt, vice-chairmen; Martine Roure, rapporteur; Jan Andersson (for Adeline Hazan), Marco Cappato, Michael Cashman, Charlotte Cederschiöld, Carmen Cerdeira Morterero (for Margot Keßler), Carlos Coelho, Gérard M.J. Deprez, Giuseppe Di Lello Finuoli, Giorgos Dimitrakopoulos (for Rocco Buttiglione), Pernille Frahm, Jorge Salvador Hernández Mollar, Anna Karamanou, Ewa Klamt, Ole Krarup, Alain Krivine (for Fodé Sylla), Baroness Sarah Ludford, Hanja Maij-Weggen (for Mary Elizabeth Bannotti pursuant to Rule 153(2)), Cecilia Malmström (for Jan-Kees Wiebenga pursuant to Rule 153(2)), Hartmut Nassauer, Elena Ornella Paciotti, Hubert Pirker, Ingo Schmitt (for Timothy Kirkhope), Patsy Sørensen, Joke Swiebel, Anna Terrón i Cusí, Maurizio Turco (for Frank Vanhecke), Gianni Vattimo and Christian von Boetticher.

The report was tabled on 26 October 2000.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

LEGISLATIVE PROPOSAL

Initiative of the French Republic with a view to adopting a Convention on improving mutual assistance in criminal matters, in particular in the area of combating organised crime, laundering of the proceeds from crime and financial crime (10213/2000 – C5-0394/2000 – 2000/0815(CNS))

The proposal is amended as follows:

Text proposed by the French Republic¹

Amendments by Parliament

(Amendment 1)
Recital 2a (new)

*having regard to the Geneva appeal of
1 October 1996,*

Justification:

This appeal was one of the first public expressions of the need felt by judges for European judicial cooperation.

(Amendment 2)
Article 3

A Member State may not invoke the provisions on confidentiality applicable to banking activities and other commercial activities in order to refuse to implement a request for mutual assistance from another Member State.

A Member State may not invoke the provisions on confidentiality applicable to banking activities and other commercial activities *or to the financial advice activities of lawyers working in private practice or as members of legal partnerships or of members of a regulated legal profession* in order to refuse to implement a request for mutual assistance from another Member State.

Justification:

Exemption for financial advice activities on grounds of confidentiality should not be invocable by lawyers and members of other regulated legal professions; the effectiveness of

¹ OJ C 243, 24.8.2000, p. 11.

the fight against money laundering depends upon this.

(Amendment 3)
Article 8(1)

1. With regard to prosecutions of or investigations into serious organised crime or laundering of the proceeds of crime, ***mutual assistance requested pursuant to the provisions of the applicable cooperation instrument may be refused only where the requested Member State considers that implementation of the request is likely to jeopardise its essential interests.***

1. With regard to prosecutions of or investigations into serious organised crime or laundering of the proceeds of crime, ***the requested Member State may make compliance with the request for mutual assistance pursuant to the provisions of the applicable cooperation instrument contingent solely upon the conditions governing the protection of fundamental rights and guarantees which must be observed in a national case of a similar nature.***

Justification:

This amendment is self-explanatory.

(Amendment 4)
Article 8(2)

2. A Member State which ***invokes these grounds for refusing mutual assistance*** shall give written reasons for its decision and inform the requesting Member State of those reasons. If, however, the requesting Member State maintains its request and no solution can be found, the reasoned decision to refuse the request shall be forwarded to the Council for information by the requested Member State, for possible consideration in the context of a subsequent evaluation at the level of the European Union of the operation of this Convention.

2. A Member State which ***refuses the request for mutual assistance on grounds of its incompatibility with the fundamental guarantees enshrined in its domestic law*** shall give written reasons for its decision and inform the requesting Member State of those reasons ***within two months of receipt of the request by the competent institution.*** If, however, the requesting Member State maintains its request and no solution can be found, the reasoned decision to refuse the request shall be forwarded to the Council for information by the requested Member State, for possible consideration in the context of a subsequent evaluation at the level of the European Union of the operation of this

Convention.

Justification:

This amendment is self-explanatory. Refusal by a Member State to cooperate with a request for mutual assistance on the grounds of an essential interest is only admissible if it is not only duly justified but also the subject of an accelerated procedure. Failing such a procedure, mutual legal assistance would lose its effectiveness in an area where only rapid judicial cooperation at European level makes any sense.

(Amendment 5)

Article 9

While taking account of its own constitutional structures and national traditions, each Member State shall set up integrated multidisciplinary teams at national level, where they do not already exist, specifically in the area of organised crime, in particular with regard to laundering of the proceeds of crime. The coordinating teams *should* be familiar with national criminal investigations to enable them to contribute to developing national policies in their field of competence and to exchange information amongst themselves, in particular pursuant to Article 7 of the 2000 Convention.

While taking account of its own constitutional structures and national traditions, each Member State shall set up integrated multidisciplinary teams ***with national competence*** at national level, where they do not already exist, specifically in the area of organised crime, in particular with regard to laundering of the proceeds of crime. The coordinating teams ***shall*** be familiar with national criminal investigations to enable them to contribute to developing national policies in their field of competence and to exchange information amongst themselves, in particular pursuant to Article 7 of the Convention ***of 29 May 2000. The Member States shall appoint for this purpose a European cooperation unit with a view to providing optimum information exchange and identifying and proposing best practice in this area.***

Justification:

The setting-up of a European cooperation unit would reinforce the effectiveness of cooperation among the multidisciplinary teams. In the future this unit could become one of the components of the European Judicial Network and, later, Eurojust.

DRAFT LEGISLATIVE RESOLUTION

European Parliament legislative resolution on the initiative of the French Republic with a view to adopting a Convention on improving mutual assistance in criminal matters, in particular in the area of combating organised crime, laundering of the proceeds from crime and financial crime (10213/2000 – C5-0394/2000 – 2000/0815(CNS))

(Consultation procedure)

The European Parliament,

- having regard to the initiative of the French Republic (10213/2000¹),
 - having regard to Article 34(2)(d) of the EU Treaty,
 - having been consulted by the Council pursuant to Article 39(1) of the EU Treaty (C5-0394/2000),
 - having regard to Rules 106 and 67 of its Rules of Procedure,
 - having regard to the report of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs (A5-0314/2000),
1. Approves the initiative of the French Republic as amended;
 2. Calls on the Council to notify Parliament should it intend to depart from the text approved by Parliament;
 3. Asks to be consulted again if the Council intends to amend the initiative of the French Republic substantially;
 4. Instructs its President to forward its position to the Council and Commission and to the Government of the French Republic.

¹ OJ C 243, 24.8.2000, p. 11.

EXPLANATORY STATEMENT

I. The need to step up the fight against money laundering

1. The context of the draft Convention

It is quite clear that international crime has increased in volume and become considerably more organised in the past few years as a result of a dual process of concentration and globalisation which mirrors exactly the development of the economy. According to United Nations statistics, the annual volume of capital recycled by means of money laundering operations, involving financial arrangements which are often highly sophisticated, amounts to \$ 1 000 bn.

Since it is covert and very complex, the crime of money laundering is a difficult one to detect, having as it does no direct victim and causing no visible damage. As a result, only international police and judicial cooperation can effectively combat this criminal practice.

It was for this reason that the Heads of State or Government meeting in Tampere on 15 and 16 October 1999 concluded that there was a need to reinforce European cooperation in this area in particular.

At European level mutual assistance in criminal matters in general has already led to the adoption of several texts, such as the Council of Europe Convention of 20 April 1959 and the very recent European Convention of 29 May 2000.¹

In the more specific area of money laundering, we might mention the Council of Europe Convention of 8 November 1990 and the Council Directive of 10 June 1991, which is currently being amended under the codecision procedure.²

2. Scope of the draft Convention

The aim of the French Presidency's initiative is to improve a number of instruments relation to judicial cooperation in criminal matters, first and foremost the two general Conventions on mutual assistance referred to above, particularly in the area of the fight against money laundering.

The proposed amendments may be summarised as follows:

- (a) removing a number of legal obstacles to mutual assistance, such as:
 - non-invocability between EU Member States of the exceptions included in the 1959 Convention
 - non-invocability of banking and commercial secrecy
 - non-invocability of the fiscal nature of transactions, which is a major step forward
 - strict limitation of the reasons which can be evinced for refusing assistance to the

¹ OJ C 197, 12.7.2000, p. 1 - Di Pietro report A5-0019/2000.

² Proposal for a Council directive - COM(1999) 352 - Lehne report A5-0175/2000.

'essential interests' invoked by the State required to give assistance, with notions of sovereignty, public order and security being excluded

- (b) practical measures aimed at reinforcing mutual judicial assistance, such as:
- the possibility of extending requests for investigations to include the details of banking operations
 - the possibility of making supplementary requests for mutual assistance
 - a procedure for traceability of the proceeds from crime
 - a procedure whereby an *ad hoc* committee would examine whether or not the 'essential interests' invoked by a Member State as the reason for refusing to divulge information were valid
 - setting-up by the Member States of multidisciplinary coordination teams where they do not already exist, in order to increase the efficiency of inquiries and to encourage exchange of information.

II. Evaluation of the draft Convention

One cannot but approve in principle and as a whole the measures contained in this draft Convention, which meet the wish expressed by the Tampere European Council to combat money laundering, which 'is at the very heart of organised crime (... and ...) should be rooted out wherever it occurs'.

The text could, however, benefit from a few changes which would further improve the effectiveness of mutual assistance in keeping with the aim being sought.

These changes would be of two kinds: legal and practical.

1. Changes of a legal nature

The provisions of the draft Convention which could usefully be made more comprehensive and precise concern the concepts of confidentiality and 'essential interests'.

(a) confidentiality

Article 3 states that banking and commercial secrecy cannot be invoked as reasons to refuse to implement requests for mutual assistance. We consider it essential to extend this non-invocability to the professional secrecy which might be invoked by lawyers and members of other regulated legal professions as reasons to refuse assistance. The obligation to observe professional secrecy should be lifted where it is being used to cover manifestly criminal activities.

(b) 'essential interests'

Article 8 of the draft Convention limits the reasons which Member States may invoke for refusing to provide assistance to 'essential interests'. This represents progress as compared to Article 2(b) of the 1959 Convention, which referred to very general concepts such as sovereignty, security and public order.

At the point we have currently reached, we must probably, as a residual concession, still allow a State called upon to give assistance to invoke an 'essential interest' as a reason to oppose a

demand for mutual assistance. At the Avignon symposium of 16 October 1998, Ms Elisabeth Guigou, Keeper of the Seals and French Minister of Justice, wondered whether, given the seriousness of organised crime, it was legitimate for these essential interests to prevent direct communication between judges. The procedure for examining the admissibility of these 'essential interests' would therefore benefit from being even more rapid if we wish the Convention to be effective. It is for this reason that we believe that a maximum period of two months should be imposed on the State asked for information in which to make known its refusal to give assistance, after which time its request should be deemed inadmissible.

2. Practical improvements

The setting-up of multidisciplinary coordination teams is a good idea in itself, but the remit of these teams should be stated even more precisely than it is in the current text, particularly as regards information exchange. In addition, the establishment of a European cooperation unit would be useful in that it could facilitate information exchange between the relevant authorities in the Member States and encourage the identification and use of best practices.¹

Conclusion

The proposals which are the subject of the above amendments have only one *raison d'être*: to seek a form of mutual assistance in criminal matters which is as effective as possible and able to meet the challenges of organised crime, particularly money laundering. The draft Convention, as we have noted, is part of a set of measures recently presented following the Tampere European Council with a view to creating the area of freedom, security and justice called for in the Amsterdam Treaty.

In conclusion, in accordance also with the conclusions of the last Eurojustice Conference, held in Rouen on 28 and 29 October 1999, the Member States must be called upon as a matter of urgency to implement with all possible speed all the instruments necessary for effective police and judicial cooperation between Member States. But how effective will these measures be in reality if - as recently stressed in a French parliamentary mission inquiry² - tax havens, offshore centres and other secret refuges for illegal capital escape their control?

Concerted action by the European Union - difficult, certainly, but essential - is required if we are to achieve this.

¹ Cf. Lehne report on the initiative of the Republic of Finland concerning arrangements for cooperation between financial intelligence units of the Member States in respect of exchanging information, A5-0102/2000.

² Information report on the obstacles to the control and prevention of financial crime and money laundering in Europe, French National Assembly No 2311, V. Peillon - A. Montebourg.