Convention (2000) on mutual assistance in criminal matters: organised and financial crime, money laundering. Initiative France. 2001 Protocol

2000/0815(CNS) - 19/07/2000 - Legislative proposal

PURPOSE: to present a French initiative 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. CONTENT: The purpose of this draft Convention is to supplement the provisions and facilitate the application between the Member States of the following instruments for cooperation governing mutual assistance between their competent authorities: - the 1959 European Convention on Mutual Assistance in Criminal matters, - the Additional Protocol to the European Convention on Mutual Assistance, signed in 1978, - the Convention on Mutual Assistance in Criminal Matters, established on the basis of Articles 31 and 34 of the Treaty on European Union by the Council Act of 29/05/2000 (referred to as the '2000 Convention'), - the provisions in force on mutual assistance in criminal matters of the Convention implementing the 1985 Schengen Agreement on the gradual abolition of checks at common border, - Chapter 2 of the Treaty on Extradition and Mutual Assistance in Criminal Matters between Belgium, Luxembourg and the Netherlands, - the 1990 European Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime. This Convention shall not affect the application of more favourable provisions in bilateral or multilateral agreements between Member States, or arrangements in the field of mutual assistance in criminal matters agreed on the basis of uniform legislation or of a special system providing for the reciprocal application of measures of mutual assistance in their respective territories. The main matters dealt with by the draft Convention are as follows: 1) Reservations and declarations in Article 5 of the 1959 Convention: these shall not be invoked between the Member States. 2) Banking and commercial secrecy: 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. 3) Traceability of the proceeds from crime: measures to be taken to encourage the provision and securing of documents, information and other data likely to constitute evidence as to the existence of proceeds of crime, their location or movement, their nature, legal status or value, and the final beneficiary. 4) Request for banking information: a Member State which receives a request for mutual assistance must provide as soon as possible the list of all types of bank accounts of which a natural personb being prosecuted or under suspicion in the requesting Member State is or was the holder or financial beneficiary. 5) Fiscal offencs: mutual assistance may not be refused solely on the grounds that the request concerns offences relating to taxes and excise duties, customs or foreign exchange. 6) Fundamental interests: 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 berefused only where the requested Member State considers that implementation of the request is likely to jeopardise its essential interests. Where such grounds are invoked, reasons must be provided in writing to the requesting Member State. 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 this Convention. 7) Multidisciplinary structures: while taking account of its own constitutional structures, each Member State shall set up integrated multidisciplinary teams at national level, where they do not already exist, specifically in the are of organised crime, in particular with regard to laundering of the proceeds of crime. This Convention shall be subject to adoption by the Member States in accordance with their respective constitutional requirements. It shall be open to accession by any State which becomes a member of the EU.