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

2000/0815(CNS) - 30/06/2000 - Document attached to the procedure

This document comprises an explanatory note on the initiative submitted by France with a view to adopting a Convention on improving mutual assistance in criminal matters. This new text is designed to supplement the Council of Europe Convention on mutual assistance in criminal matters of 20 April 1959 and the European Union Convention on mutual assistance in criminal matters adopted on 29 May 2000. This new Convention will have repercussions on mutual assistance as a whole and on action against all forms of cross-border crime. The main provisions are as follows: 1. On the matter of mutual assistance, the wording is similar to that of the EU Convention on mutual assistance, with the addition of a reference to laundering, search, seizure and confiscation of the proceeds from crime of November 1990. 2. Article 2 on reservations and declarations on Art. 5 of the 1959 Convention : mutual assistance requests for coercive measures are still commonly refused on the basis of direct or indirect application of the declarations made by some Member States concerning Article 5 of the 1959 Convention. Requesting judicial authorities are aware of this problem and end up not making certain requests, which merely serves to mask a very real problem. Article 2 of the Proposed Convention does not require the withdrawal of the declarations made on Article 5, but does require Member States not to invoke those declarations between themselves. It also contributes thereby to progress towards the mutual recognition of decisions in criminal matters urged by the Heads of State or Government at Tampere. 3. Article 3 on banking secrecy: a number of recent conventions rule out the possibility of relying on banking secrecy as grounds for refusing to execute a request for mutual assistance (e.g. 1988 UN Convention against illicit traffic in narcotic drugs and psychotropic substances, 1990 Convention on laundering, search, seizure and confiscation of the proceeds from crime, OECD Convention on combating bribery of foreign public officials in international business transactions). The proposed article, which derives from the Tampere conclusions, is intended as a clear expression of an undertaking between the Member States. 4. Article 4 on the traceability of the proceeds of crime imposes an obligation to achieve a result, while leaving the choice to Member States. The wording is based on that of Art 8 of the Convention on laundering, search, seizure and confiscation of the proceeds from crime of 8 November 1990. 5. Article 5 concerning request for banking information imposes on each Member State an obligation as to result. It also makes provision for dealing with the difficulties of tracing banking transactions and capital movements particularly those between the territory of the requested State and the territory of inadequately regulated jurisdictions, whose laws and practices with regard to mutual assistance and action against money laundering are a hindrance to investigations. 6. Additional requests for mutual assistance are covered by Article 6. Investigators acting on a request made in connection with one bank account frequently discover that money has been moved to another bank within the requested State's jurisdiction. It is important in such cases to be able to act rapidly to extend the investigations to the bank accounts concerned. Clearly this measure could be useful in many other situations in which furtherinvestigation are found to be necessary during the execution of international letters of request. 7. Article 8 on fundamental interests proposes a twofold approach: - limiting the grounds for refusing cooperation, while counching them in very general terms, thereby leaving Member States a wide margin of discretion. Thus, as between Member States of the EU, the notions of sovereignty, security and public order have been dispensed with, and only the notion of essential interests will henceforth apply; - setting up, under certain conditions and through the Council, a method for ironing out amicably any differences that may arise between two Member States over the notion of essential interests. Moreover the obligation of the requested State to provide reasons for its refusal to accord mutual assistance will enable to Court of Justice to exercise its power of review more effectively. 8. Under Art 9,

reference is made to the establishment of specialist multidisciplinary structures in the Member States for effective investigation of organised crime, in particular economic and financial crime.