


# Procedure file

Basic information		
CNS - Consultation procedure	<a href="#">2000/0815(CNS)</a>	Procedure completed
Convention (2000) on mutual assistance in criminal matters: organised and financial crime, money laundering. Initiative France. 2001 Protocol See also <a href="#">1999/0809(CNS)</a>		
Subject 7.40.04 Judicial cooperation in criminal matters		

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	<b>LIBE</b> Citizens' Freedoms and Rights, Justice and Home Affairs	PSE <a href="#">ROURE Martine</a>	29/08/2000
	Former committee responsible		
	<b>LIBE</b> Citizens' Freedoms and Rights, Justice and Home Affairs	PSE <a href="#">ROURE Martine</a>	29/08/2000
Council of the European Union	Council configuration	Meeting	Date
	<a href="#">Justice and Home Affairs (JHA)</a>	<a href="#">2376</a>	16/10/2001
	<a href="#">Justice and Home Affairs (JHA)</a>	<a href="#">2350</a>	28/05/2001
	<a href="#">Justice and Home Affairs (JHA)</a>	<a href="#">2314</a>	30/11/2000
European Commission	Commission DG	Commissioner	
	<a href="#">Justice and Consumers</a>		

Key events			
19/07/2000	Legislative proposal published	<a href="#">10213/2000</a>	Summary
04/09/2000	Committee referral announced in Parliament		
24/10/2000	Vote in committee		Summary
24/10/2000	Committee report tabled for plenary, 1st reading/single reading	<a href="#">A5-0314/2000</a>	
13/11/2000	Debate in Parliament		
14/11/2000	Decision by Parliament	<a href="#">T5-0498/2000</a>	Summary
30/11/2000	Debate in Council	<a href="#">2314</a>	
29/06/2001	Amended legislative proposal for reconsultation published	<a href="#">10076/2001</a>	Summary

16/07/2001	Formal reconsultation of Parliament		
01/10/2001	Vote in committee		
04/10/2001	Decision by Parliament	<a href="#">T5-0501/2001</a>	Summary
16/10/2001	Debate in Council	<a href="#">2376</a>	
16/10/2001	Act adopted by Council after consultation of Parliament		
16/10/2001	End of procedure in Parliament		
21/11/2001	Final act published in Official Journal		

### Technical information

Procedure reference	2000/0815(CNS)
Procedure type	CNS - Consultation procedure
Procedure subtype	Legislation
	See also <a href="#">1999/0809(CNS)</a>
Legal basis	Treaty on the European Union (after Amsterdam) M 034; Treaty on the European Union (after Amsterdam) M 031; Rules of Procedure EP 163; Rules of Procedure EP 52-p1
Stage reached in procedure	Procedure completed
Committee dossier	LIBE/5/14997; LIBE/5/13532

### Documentation gateway

Document attached to the procedure	<a href="#">09843/2000</a>	30/06/2000	CSL	Summary
Legislative proposal	<a href="#">10213/2000</a> <a href="#">OJ C 243 24.08.2000, p. 0011</a>	19/07/2000	CSL	Summary
Committee report tabled for plenary, 1st reading/single reading	<a href="#">A5-0314/2000</a> <a href="#">OJ C 223 08.08.2001, p. 0005</a>	24/10/2000	EP	
Text adopted by Parliament, 1st reading/single reading	<a href="#">T5-0498/2000</a> <a href="#">OJ C 223 08.08.2001, p. 0091-0092</a>	14/11/2000	EP	Summary
Amended legislative proposal for reconsultation	<a href="#">10076/2001</a>	29/06/2001	CSL	Summary
Text adopted by Parliament, 1st reading/single reading	<a href="#">T5-0501/2001</a> OJ C 087 11.04.2002, p. 0154-0213 E	04/10/2001	EP	Summary
Document attached to the procedure	<a href="#">05568/5/2002</a> <a href="#">OJ C 257 24.10.2002, p. 0001-0009</a>	14/10/2002	CSL	Summary

### Additional information

European Commission	<a href="#">EUR-Lex</a>
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Convention (2000) on mutual assistance in criminal matters: organised and financial crime, money laundering. Initiative France. 2001 Protocol

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 further investigation 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 couching 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.?

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

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**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 person being prosecuted or under suspicion in the requesting Member State is or was the holder or financial beneficiary. 5) Fiscal offences: 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 be refused 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 area 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.?

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

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The committee adopted the report by Martine ROURE (PES, F) amending the French initiative under the consultation procedure. While approving the draft Convention, the committee felt that a few changes to the text were needed for greater clarification. For example, it amended Article 3 so that Member States would be prevented from invoking not only banking and commercial secrecy as reasons to refuse to implement requests for mutual assistance but also the professional secrecy covering financial advice activities of lawyers and members of other regulated legal professions. The committee argued that the effectiveness of the fight against money laundering depended on such non-invocability. It also amended the provision under which Member States could oppose a request for mutual assistance by invoking "essential interests" and stipulated that the requested Member State could make compliance with such a request 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. If the Member State in question then refused the request on grounds of incompatibility with such fundamental guarantees enshrined in its domestic law, the committee wanted it to provide due justification for this refusal within 2 months of receiving the request. The committee argued that, if such refusals were not subject to an accelerated procedure, mutual legal assistance would lose its effectiveness in an area where only rapid judicial cooperation at European level made any sense. Lastly, the committee proposed that a European cooperation unit be set up to reinforce the effectiveness of cooperation among the national multidisciplinary teams and encourage the identification and use of best practice.?

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

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The Parliament voted 444 to 20 with 85 abstentions in favour of a resolution, drafted by Mrs Martine ROURE (PES, F), endorsing an initiative from the French Presidency which aims to step up cooperation in the legal area to ensure that no barriers are put in place to prevent the extradition of suspected criminals accused of money laundering or other related offences involving illicit funds. (Refer to the previous step in the legislative process, decisions of committee responsible). In addition, the non-binding amendments adopted seek to extend the scope of the convention to cover lawyers acting as financial consultants, taking up protection of individuals' rights and seek to oblige any Member State invoking special reasons for not cooperating to state the reasons within two months of the receipt of the request. An other amendment approved supports the setting up of a European Cooperation Unit. ?

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

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The European Parliament is again consulted on the draft Protocol to the 2000 Convention on mutual assistance in criminal matters between the Member States and of the European Union. The main provisions of the draft Protocol concern in particular: the request for information on bank accounts; requests for information on banking transactions; requests for monitoring of banking transactions; confidentiality; obligation to inform; additional requests for mutual assistance; banking secrecy; fiscal offences; political offences forwarding refusals to the Council and the involvement of Eurojust; accession of new Member States and the entry into force for Iceland and Norway.?

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

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The European Parliament adopted the proposal without report.?

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

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**PURPOSE:** to establish a Protocol to improve the rules on mutual assistance in criminal matters between the Member States.

**COMMUNITY MEASURE:** Council Act (2001/C 326/01) establishing, in accordance with Article 34 of the Treaty on European Union, the Protocol to the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union.

**CONTENT:** Article 8 of the Protocol falls within the scope of Article 1 of Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latter's association with the implementation, application and development of the Schengen acquis.

Firstly, as regards requests for information on bank accounts, the Protocol stipulates that each Member State shall take the measures necessary to determine, in answer to a request sent by another Member State, whether a natural or legal person that is the subject of a criminal investigation holds or controls one or more accounts, of whatever nature, in any bank located in its territory and, if so, provide all the details of the account. With regard to requests for information on banking transactions, the Protocol states that on request by the requesting State the requested State shall provide the particulars of specified bank accounts and of banking operations which have been carried out during a specified period through one or more accounts specified in the request, including the particulars of any sending or recipient account. As regards the requests for the monitoring of banking transactions, each Member State shall undertake to ensure that, at the request of another Member State, it is able to monitor during a specified period, the banking operations that are being carried out through one or more accounts specified in the request and communicate the results thereof to the requesting Member State.

The Protocol also deals with issues such as confidentiality, obligation to inform and additional requests for mutual assistance. A Member State shall not invoke banking secrecy as a reason for refusing any co-operation regarding a request for mutual assistance from another Member

State. Concerning fiscal offences, mutual assistance may not be refused solely on the ground that the request concerns an offence which the requested Member State considers a fiscal offence. For the purposes of mutual legal assistance between Member States, no offence may be regarded by the requested Member State as a political offence, an offence connected with a political offence inspired by political motives.

With regard to territorial application, the application of this Protocol to Gibraltar will take effect when the 2000 Mutual Assistance Convention has taken effect in Gibraltar.

**ENTRY INTO FORCE:** this Protocol shall be subject to adoption by the Member States in accordance with their respective constitutional requirements. The Protocol shall enter into force in the eight Member States concerned 90 days after the notification by the State, member of the European Union at the time of adoption by the Council of the Act establishing this Protocol shall enter into force as between that Member State and those Member State for which that Convention enter into force. This Protocol shall be open to accession by any State which becomes a Member of the European Union and which accedes to the 2000 Mutual Assistance Convention. With regard to the entry into force for Iceland and Norway, without prejudice to Article 8 of the Association Agreement, the provisions shall enter into force for Iceland and Norway 90 days after the receipt by the Council and the Commission of the information pursuant to Article 8(2) of the Association Agreement upon fulfilment of their constitutional requirements.

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

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This document consists of the explanatory report to the Protocol to the 2000 convention on mutual assistance in criminal matters between the Member States of the European Union. The report recalls in particular that in June 2000 France introduced a draft instrument relating to mutual assistance in criminal matters between the Member States of the Union. The initiative was made in the light of the conclusions of the European Council held at Tampere on 15 and 16 October 1999, in which it was concluded that serious economic crime is one of the sectors of particular relevance and that money laundering is at the very heart of organised crime and should be rooted out wherever it occurs. The report highlights that the initiative was originally framed as a new Convention designed to supplement in particular the 1959 Council of Europe Convention on mutual assistance in criminal matters and the Convention on mutual assistance in criminal matters between the Member States of the European Union adopted on 29 May 2000. In the course of the negotiations the instrument was changed into a Protocol to the 2000 Convention and supplemented by certain provisions which were not originally covered (Articles 3 and 9). One provision in the original draft relating to abolishment of the dual criminality requirement was not included in the Protocol. Like the European Mutual Assistance Convention and the 2000 Convention, the provisions of the Protocol are of general application with one important exception: the provisions in Article 1 apply only to certain offences. The provisions of the Protocol can be divided into three different parts: - Assistance relating to bank accounts (Articles 1-4); - Additional requests (Articles 5 and 6) and - Grounds for refusals (Articles 7-10). Articles 11-16 include provisions relating to reservations, entry into force, accession of new Member States, position of and entry into force for Iceland and Norway and depository.?