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NOTE

from : Presidency

to : Working Party on Mutual Assistance in Criminal Matters

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Subject: Draft Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union – Interception of subjects on national territory using national service providers („remote approach“)

The Council decided at its meeting on 12 March 1999 that in Title III of the draft a provision establishing a clear legal basis for the application of the „remote approach“ between Member States should be introduced. The working group was invited to deal with this matter. The concerns of the Italian delegation with regard to the role of the ground station Member State have been referred to Coreper for further consideration.

For the purpose of implementation of the „remote approach“ in Title III of the draft the Presidency proposes the annexed text.

Article 11b**Interception of subjects on national territory
using national service providers**

- (1) For the purposes of a criminal investigation, the competent authorities of a Member State (intercepting Member State) may, in accordance with the requirements of its domestic law, carry out orders to intercept telecommunications with respect to the use of a telecommunications connection on national territory using national service providers, provided that the telecommunications connection intercepted is being used on national territory and without a request for assistance by another Member State being required.**

- (2) Paragraph 1 shall apply mutatis mutandis where the competent authorities of a Member State (intercepting Member State) have ordered the interception of a telecommunications communication of a subject on national territory in response to a request from another Member State pursuant to Article 12 paragraph 2 (b) in conjunction with paragraph 5 (b).**

- (3) The Member States shall ensure that the operators of telecommunications systems, which make possible telecommunications within an international telecommunications network, are entitled to make their technical facilities for the purposes of lawful interception of telecommunications available for use by a provider of telecommunications services in this telecommunications network from another Member State (national service provider) under the following conditions:**
 - a) The national service provider is resident in a Member State other than the Member State where the technical facilities for intercepting telecommunications are located.**

- b) **The national service provider is obliged by order of the competent authorities of his Member State to make possible the lawful interception of a telecommunications connection.**

- c) **The intercepted telecommunications connection is located on the territory of the Member State in which the national service provider is resident (intercepting Member State).**

- d) **The national service provider can execute the order of the competent authorities for the lawful interception of the telecommunications connection without the technical support of other agencies in accordance with the requirements of the domestic law of its Member State; only however whilst the intercepted telecommunications connection is being used on the territory of the Member State in which he is resident (intercepting Member State).**

Article 12

Requests for

interception of telecommunications

...

2. Requests under paragraph 1 may be made in relation to the use of means of telecommunications by the subject of the interception, **if this subject is present**
- (a) in the requesting Member State, and where the requesting Member State needs the (technical) assistance of the requested Member State to intercept his communications;
 - (b) in the requested Member State, and where his communications can be intercepted (...) ⁽¹⁾ in that Member State;
 - (c) in a third Member State, **which has been informed pursuant to Article 13 (1) (a)** ⁽²⁾, and where the requesting Member State needs the (technical) assistance of the requested Member State to intercept his communications.

(1) „only“ has been deleted in view of Article 11b.

(2) The insertion makes it clear to the user that Article 13 (1) (a) is also to be observed in this scenario.