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Delegations will find enclosed a modernised version of the Handbook on the Naples II Convention (from now on called "Guidance"), resulting from the work of the CCU Steering Sub Group on Action 8.7 of the 8th Action Plan.

This version is an update of the previous version, in which
Part I, containing the general provisions is set out in document 13615/05,
Part II, containing the national fact sheets is set out in 15429/16, and
Part III, containing the annexes, is set out in 13615/05 ADD 1.

Delegations are invited to take note of the revised version which replaces the Handbook on the Naples II Convention.

GUIDANCE ON THE NAPLES II CONVENTION

TABLE OF CONTENTS

Part I: General Provisions	4
1. General presentation and scope of the Convention	4
2. Use of the results as evidence (in court) under the Naples II Convention	5
3. Definitions	6
4. Powers	11
Part II: Standard Forms	12
Introduction	12
Part III: Special Forms	13
Introduction	13
Part IV: Frequently Asked Questions	14
- General Provisions	14
- Use of the Naples II Convention by judicial authorities	15
- Competences	16
- Forms of cooperation	18
- CCU related matters	19
Part V: National Fact Sheets (restricted: published on the AFIS Library/EJN)	22
ANNEXES	23
1. Standard form for requests for assistance and cooperation/Communication of Information	23
2. Best Practice Guide on the five special forms of cooperation	26

Introduction

The Naples II Convention is a tool for mutual assistance and cooperation that can be used by all competent law enforcement and judicial authorities. The purpose of this Convention is not to serve as a tool for the sole use of customs authorities in the formal sense therefore, but to enable all authorities that are competent, under their national law, to enforce customs provisions to cooperate with each other. The Naples II Convention facilitates assistance and cooperation, for example, between different customs authorities, between customs and police, between different police services and between customs and border forces.

Especially in relation to the use of special forms of cooperation on the basis of Article 3 of the Naples II Convention, judicial authorities can be involved. In such situations, judicial authorities can base the assistance or cooperation on the Naples II Convention or on judicial provisions relating to mutual assistance or cooperation.

The Naples II Convention is a bridge between the national legislation in place in each Member State (MS): no authority can derive new or additional powers from the Convention. The decision as to who applies the Naples II Convention, and how it is applied, is therefore taken by each Member State in accordance with their national laws within the framework given by the Naples II Convention. See also the Member States fact sheets for further information.

This Guidance is intended as a guide and has no binding effect.

PART I: GENERAL PROVISIONS

1. General presentation and scope of the Convention

The Convention on mutual assistance and cooperation between customs administrations (the 'Naples II Convention') was signed in Brussels on 18 December 1997. The Convention entered into force on 23 June 2009.

This Convention, in respect of the prosecution and punishment of infringements of European Union customs provisions, supplements Regulation (EC) No 515/97 (customs and agricultural matters) and also Regulation No 389/2012 (excise matters) on mutual assistance between the administrative authorities of the Member States. These Regulations in fact deal only with administrative cooperation aiming to prevent and detect breaches of European Union customs and excise provisions.

Art. 1 is about the use of the Convention and states that the Member States shall provide each other with mutual assistance and shall cooperate with one another through their customs administrations, with a view to:

- preventing and detecting infringements of national customs provisions, and
- prosecuting and punishing infringements of EU and national customs provisions.

Purpose	National customs provisions	European union customs provisions
Assistance <u>To prevent and detect</u> <i>(Administrative proceedings)</i>	Naples II	e.g. Reg. 515/97 Reg. 904/2010 Reg. 389/2012
Assistance <u>To prosecute and punish</u> <i>(Law enforcement)</i>	Naples II	Naples II

The Naples II Convention therefore represents a significant legal reinforcement of the fight against fraud and forms of transnational trafficking by combating infringements of national and European Union customs provisions.

The Naples II Convention confers no new powers on the authorities responsible for applying it. The authorities implement the provisions of the Convention within the framework of their existing national powers (Art. 2).

This provision means that:

- the jurisdiction of the various authorities (such as the division of responsibilities between customs, police or other authorities), and
- the operative powers of all those authorities (such as the right to investigate, to interview or to observe)

are not affected by the Naples II Convention.

The Naples II Convention can be used under any circumstances when it comes to infringements of national or EU customs provisions. However, judicial authorities may also base their request for mutual assistance or co-operation on other judicial provisions related to mutual legal assistance.

In fact, the applicant authority must check on a case-by-case basis the most appropriate legal basis for requesting information or evidence.

2. Use of the results as evidence (in court) under the Naples II Convention

Any of the findings obtained during the assistance (Art. 14, Art. 18 and Art. 19.7) may be used by the competent authorities in the applicant State as evidence, for example in judicial or administrative proceedings, in accordance with that State's national law.

The Naples II Convention in fact enables information or documents to be passed between the requesting and the requested Member States customs administrations. The processes whereby the requested State's authorities obtain such information or documents, and their use by the applicant State's authorities, are always subject to each State's national law.

If judicial authorities decide to base their request on the Naples II Convention, they do not have to make this request themselves. They may instruct the investigation office to submit a request on the basis of the Naples II Convention on their behalf. If this is the case, the judicial authority may of course give instructions concerning the content of the request. The investigation office in the requested Member State that is to conduct the investigation should be informed that this request is based on a request from judicial authorities.

If the Naples II Convention is used, such a procedure may be beneficial to both the judicial authorities and the investigation offices. On the one hand, the judicial authorities do not have to send a Mutual Legal Assistance (MLA) request. On the other hand, the investigation offices of the applicant Member State may also ask their direct counterparts for assistance.

The information exchanged under the Naples II Convention may be used as evidence in administrative and criminal proceedings. This includes findings, certificates, documents, certified true copies and other papers. Their evidential value will be governed by the applicant Member State's national law (Art. 14, Art. 18 and Art. 19(7)).

The requested Member State cannot restrict the use of the information provided!

3. Definitions (Art. 4)

– National customs provisions:

National customs provisions are defined in Art. 4(1) of the Naples II Convention. These include, for example, Member States' regulations and administrative provisions in respect of goods subject to bans, restrictions or controls, such as drugs, weapons and child pornography. They also include non-harmonised excise duties, for example excise duties on coffee in Germany and lubricant-oil in some MS.

Note: With regard to national customs provisions, the Naples II Convention not only covers mutual assistance for repressive purposes - as it does with regard to European Union customs provisions - but also mutual assistance for administrative purposes, as the individual Member States (and not the European Union) are competent.

– EU* customs provisions:

'Community customs provisions' are defined in Art. 4(2) of the Naples II Convention. They cover the body of:

- Community customs provisions adopted at Community level (the definition corresponds to the first indent of Art. 2(1) of Regulation (EC) No 515/97),
- Community agricultural provisions adopted at Community level (the definition corresponds to the second indent of Art. 2(1) of Regulation (EC) No 515/97),
- Provisions adopted at Community level on
 - a) harmonised excise duties (duties on alcohol, alcoholic beverages, manufactured tobacco, energy products and electricity) including the intra-Community movement of goods under the duty-suspension procedure, and
 - b) turnover tax on imports (in respect of imports from third countries), together with the national provisions implementing them.

The Naples II Convention does not cover value-added tax except for value-added tax on importation (see spreadsheet) (Art. 4(2)).

* With the entry into force of the Treaty of Lisbon, the European Union succeeded the legal personality of the European Communities. Therefore, all references to 'Community customs provisions' – in contrast to 'national customs provisions' – have to be read as 'European Union customs provisions'.

	European Union Customs Provisions		
	Art. 4(2), third indent		
	Naples II Convention		
Purposes:			
Art 1(1)	Customs duties	Value-added tax	Value-added tax on importation
Naples II			
preventing and detecting	Reg. 515/97	Reg. 904/2010	Reg. 904/2010
prosecuting and punishing	Naples II	---	Naples II

- Infringement:

Art. 4(3) of the Convention provides a very broad definition of the term 'infringement'. It covers not only all forms of participation (e.g. instigation, involvement as an accessory) and attempts, but also the mere fact of participation in a relevant criminal organisation and the laundering of money derived from the infringements mentioned, as well as infringements of customs provisions punishable by administrative penalties.

- Money laundering

Money laundering is the process of making large amounts of money obtained from serious crime look as if they originated from a legitimate source.¹ It allows the criminals to enjoy these profits without endangering their source.

- Applicant authority:

For the purposes of the Convention, 'applicant authority' means the competent authority of the Member State asking for assistance.

- Requested authority:

This is the competent authority of the Member State to which a request for assistance is addressed.

- Customs administrations:

Art. 4(7) states that, for the purposes of the Convention, 'customs administrations' means Member States' customs authorities as well as other authorities (police, etc.) with jurisdiction for implementing the provisions of this Convention.

¹ Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering and terrorist financing (OJ L 141, 05.06.2015, p. 73).

This means that, if - according to the law of a specific Member State - the customs authority [(in its formal meaning)] does not have the jurisdiction or the full power to apply the Naples II Convention, the police or other competent authorities in that Member State may be obliged to provide the information and evidence requested. In return, they may also request assistance on the basis of the Naples II Convention.

However, in all cases the requests must pass through the competent CCU) in the MS. The requested CCU will identify the competent authority in its MS.

However, with regard to the Central Coordinating Unit (Art. 5), the Convention specifically states that Member States must appoint this unit within their customs authority.

– Personal data:

This means all information relating to an identified or identifiable natural person; a person is considered to be identifiable if he or she can be directly or indirectly identified, *inter alia* by means of an identification number or one or more specific elements which are characteristic of his or her physical, physiological, psychological, economic, cultural or social identity.

– Cross-border cooperation:

This refers to cooperation between customs administrations across the borders of each Member State.

– Mutual assistance:

This means the granting of assistance between customs administrations as provided for in the Naples II Convention.

– Central Coordinating Units

In general, the Central Coordinating Units (CCUs) play a pivotal role in ensuring the proper, day-to-day application of the Naples II Convention. They have to ensure the correct application of the Convention, and efficient and fast cooperation not only among customs authorities, but also between the other authorities (police, prosecutor, etc.). The CCUs in many Member States can be contacted around the clock and are therefore able to ensure the swift processing of mutual assistance requests. CCUs should be staffed by mutual assistance experts who can also pass on requests to the police or other appropriate authorities if the customs administration is not, under national law, empowered or best suited to handle a request for mutual assistance. These experts need to have a clear view of all the national authorities that have prevention and detection powers, as well as of the provisions relating to the prosecution and punishment of infringements of European Union customs provisions and national customs provisions under the Naples II Convention and within other legal frameworks.

4. Powers

In order to provide the assistance required under Title II of the Convention, the requested authority or the competent authority which it has addressed shall proceed as though it were acting on its own account or at the request of another authority in its own Member State. In so doing, it shall avail itself of all the legal powers at its disposal within the framework of its national law in order to respond to the request.

The requested authority shall extend this assistance to all circumstances of the infringement which have any recognisable bearing on the subject of the request for assistance without this requiring any additional request. In case of doubt, the requested authority shall first contact the applicant authority.

PART II: STANDARD FORMS

Introduction

The quality of the response is largely dependent on the quality of the request.

Requests must be precise and be made in writing (Art. 9 (1)). The request should include all verified and available information and demands so that the reply can be treated quickly, properly and correctly. The aim is to avoid any misunderstanding and misinterpretation of the facts mentioned in the request.

Requests must state whether the matter is also the subject of a pending or previous request for mutual legal assistance and give the relevant references.

Requests for assistance made electronically, using the standard form, will be accepted, subject to the express agreement of the unit concerned (that information can be found in the list of CCUs).

For this reason a standard form was developed by the CCUs.

The use of this form is strongly recommended!!!

The standard form is available in Annex 1 to this Guidance.

PART III: SPECIAL FORMS

Introduction

There are five special forms of cooperation under the Naples II Convention:

1. Hot pursuit
2. Cross-border surveillance
3. Controlled delivery
4. Covert investigations
5. Joint special investigation teams

The Best Practice Guide regarding the five special forms of cooperation is available in Annex 2 to this Guidance.

PART IV: FREQUENTLY ASKED QUESTIONS

General provisions

Q What is the scope of surveillance under Art 11?

Surveillance may include the requested administration keeping a special watch on, and taking note of, important locations and developments. Depending on the circumstances of the case, and especially if there is a possible criminal background, a request for a special watch to be kept may also mean more intensive observation of persons, goods and premises, in which case disclosure of the observing administrations should be avoided.

Surveillance may also include a special watch, or arrangements for a special watch to be kept, on persons suspected of having infringed or carried out preparatory acts with a view to infringing European Union or national customs provisions, and on the places, means of transport and goods connected with such infringement.

Q Is there an obligation to provide spontaneous assistance to other MS?

Yes, MS are obliged to hand over all relevant information obtained whenever there is a possibility that an infringement is being planned or will be committed in the other MS.

Q Is it possible to use the Naples II Convention to receive import declarations and all attachments under regime 4200, presented in another MS?

Yes, in case of customs infringements and a criminal investigation (eg. Undervaluation) it is possible to use the Naples II Convention to achieve all documents related to an import declaration.

Q What does a request for enquiry mean?

An enquiry is any activity (using administrative or coercive powers) that involves the collection of information and evidence concerning (criminal) proceedings in the requesting MS.

In the event that coercive powers are needed, the authorisation of the Public Prosecutor might be necessary because of national provisions in place within the requested MS (for example, search warrants, financial enquiries, wiretapping, interviews with suspects).

Q May I forward information received from a Member State under the Naples II Convention to another Member State?

Yes, but the providing Member State may place restrictions on the forwarding of the information received to other Member States, as mentioned in Art. 27.

Use of the Naples II Convention by judicial authorities

Q Do I have to make an MLA request to use the information obtained on the basis of the Naples II Convention as evidence in court?

According to the Naples II Convention this information can be used in court. However, the requesting judicial authority has the right to choose the legal basis of the request (Art. 3.2).

Therefore it is the responsibility of the judicial authority to analyse the information obtained on the basis of the Naples II Convention and then decide whether it can be used as evidence according to its national law.

If not, it is recommended that an MLA request be made.

Q Do judicial authorities constitute customs administrations?

Yes, according to the Naples II Convention customs administrations include on the one hand customs authorities and on the other hand other authorities with jurisdiction for implementing the Naples II Convention.

Therefore, if the national law of a MS confers powers to judicial authorities on customs matters or customs infringements, these authorities constitute customs administrations and can address a request for assistance using the CCU in its MS.

Competences

Q Does the Naples II Convention cover money laundering?

The extent to which money laundering is included in the Naples II Convention is described in the third indent to Art. 4(3). It is important to be aware of the fact that money laundering is only covered by the Naples II Convention in cases in which the laundered money was obtained by illegal activities that are covered by its scope of application, such as the smuggling of cigarettes or drugs. Money laundering derived from criminal activities such as fraud or racketeering is not covered by the Naples II Convention.

Q Does the Naples II Convention cover infringements on cash controls?

Yes, the Naples II Convention covers infringements on cash controls provided that these infringements constitute an offence, according to national customs law, that could give rise to a criminal procedure. Otherwise the CR 515/1997 as mentioned in Art. 6 of the CR 1889/2005 covers MA on cash controls.

Q Could a request based on the Naples II Convention be executed even if it implies activities which exceed the customs competencies of the requested MS?

Yes, but if the customs authority is not competent to process a request, the CCU shall forward it to the competent national authority and inform the applicant authority that it has done so (Art. 5.3).

Q Can I make a Naples II request for an infringement of non-harmonised excise duties applicable only in my country?

Yes! In cases concerning non-harmonised excise duties where the requested Member State does not have a non-harmonised excise duty for the same kind of goods, the requested Member State will have to investigate the request as though it did have a national excise duty for the same kind of goods (the Naples II Convention does not provide for reciprocity for goods subject to non-harmonised excise duties or for different treatment for such requests).

Q What are the possibilities available to or the limits imposed on an officer present in another MS?

Officers authorised by the applicant State may be present during the activities carried out by the requested State.

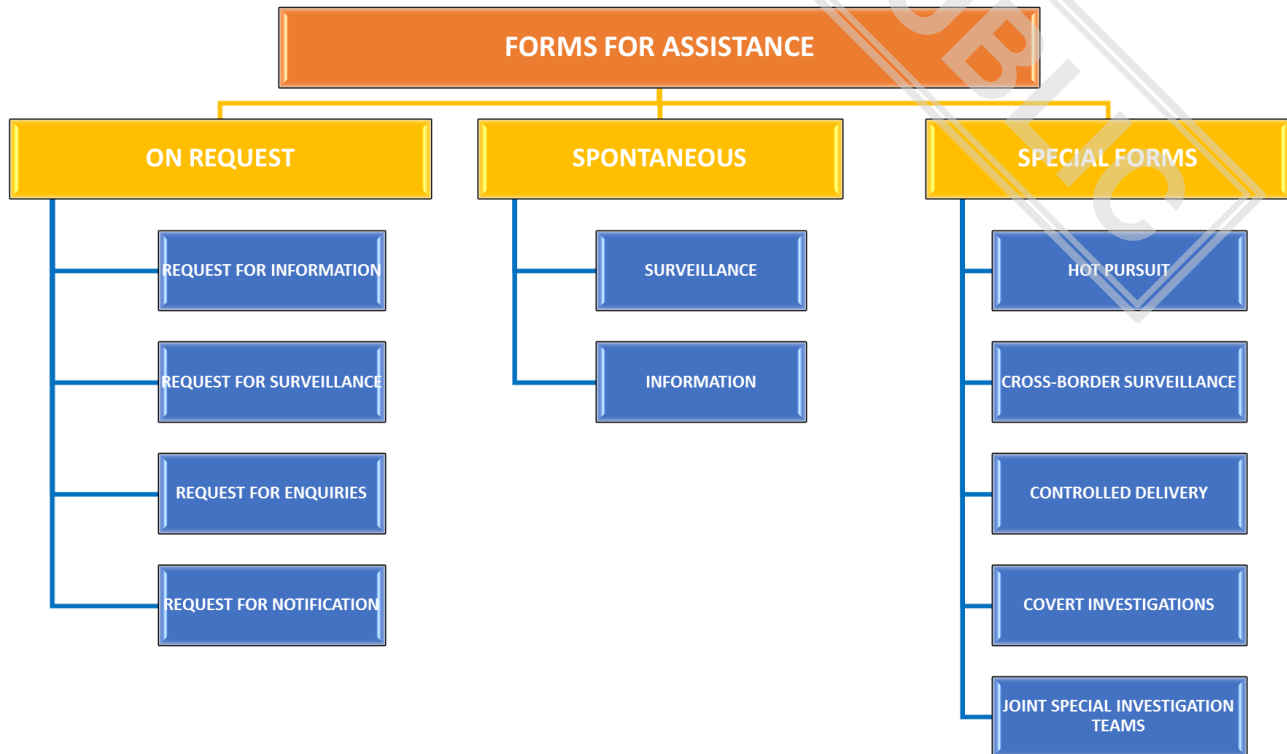
The primary role of the applicant authority's officers is to advise the requested authority's officers so that there is a suitable and targeted response to the requests for assistance in the State where the investigation is to be conducted, to respond immediately to requests for further particulars concerning the factual and legal context and, where appropriate, to give advice on the proper gathering of evidence. In very complex cases in particular, obtaining this information is also in the interests of the requested authority, as it can help to limit mistakes, avoid unnecessary investigations and simplify the response to time-consuming requests for further particulars.

Only officers of the applicant authority with the necessary detailed knowledge of the facts may perform such a role; in this respect, particular attention should be paid to Art. 25 (data protection for the exchange of data) and Art. 27 (confidentiality).

In accordance with Art. 5, officers of the applicant authority may not assume the powers of officers of the requested authority unless the Central Coordinating Unit has given prior, written consent. They are allowed access to the same premises and the same documents as officers of the requested authority, through their intermediary and for the sole purpose of the investigations in progress.

Forms of cooperation

Q What are the forms of cooperation provided for in the Naples II Convention?



Q What is the difference between surveillance on request (Art. 11) / spontaneous surveillance (Art. 16) and cross-border surveillance as a special form (Art. 21)?

Surveillance on request and spontaneous surveillance is surveillance carried out by and on the territory of the requested MS, while cross-border surveillance starts in a MS and continues or is extended into the territory of another MS by the officers that initiated the surveillance (only in case of infringements as listed in Art 19.2).

Moreover, cross-border surveillance can only be carried out under the conditions set out in Art. 21 and in accordance with the prescriptions described in the National Fact Sheets of each MS.

Q Are there restrictions on special forms of assistance?

Yes. These restrictions, and the units authorised for such direct cooperation, are set out in Part V: National Fact Sheets under 'Customs units other than central units which are authorised to cooperate directly in urgent cases'.

CCU related matters

Q How to deal with the requests which are addressed to requested MS according to the Naples II Convention and at the same time according CR. 389/2012 and/or CR. 515/1997?

Example: Cigarette smuggling from third countries to the European Union under the transit procedure. Mutual assistance may be requested in the following cases at the same time:

For administrative purposes,

- on the basis of Regulation (EC) No 515/97 for the receipt and transmission of transit papers and bills with the aim of collecting customs duties,
- on the basis of Regulation (EC) No. 904/2010 for VAT on imports,
- on the basis of Regulation (EU) No. 389/2012 for excise duties.

For repressive purposes, for conducting investigations in the context of criminal proceedings (Art.12(1)).

Normally, any single request should have a unique legal basis depending on the procedure/scope (administrative or judicial) in the requesting MS. However, the Naples II Convention does not restrict the use of information for other proceedings. Therefore, in cases of requests that have a different legal basis, all aspects of the legal basis and the scope should be clarified in the request. If not, the request should be returned to the requesting MS asking for clarification on the applicable legal basis, taking into account the purpose of the request.

Q Where can I find the acceptable languages?

You can find the acceptable languages for making requests for assistance and replies to them in the National Fact Sheet of the requested MS (see Part V: National Fact Sheets).

Q What is the timeframe for processing a request?

There is no legal obligation to answer within a specific timeframe; the response time depends on various issues.

The criteria for determining what constitutes a reasonable time frame are:

- the urgency of the request as needed and explained by the applicant MS
- the nature and purpose of the request
- the complexity of the activities necessary to fulfil the request

It is recommended that simple queries be answered in a very short time frame: not more than five days.

In other cases the reply should be given within three months.

The requested Central Coordinating Unit must inform the applicant authority about any delay and the reasons for it.

Q Am I obliged to give feedback after spontaneous assistance?

There is no obligation, but it is in the interest of the providing MS that feedback is given. A remark about an interest in feedback can be included in the message by the providing MS.

Feedback means: measures taken and (positive) results.

Q What is the best communication channel through which to send / receive the requests according to the Naples II Convention?

Any secure (AFIS / Siena / secured email) channel is the 'best' channel, depending on the conditions of involved parties.

Q How to deal with a request received via SIENA including the statement 'consider this request according to the Naples II Convention'?

Forward the request to the CCU of your Member State.

Q How to deal with requests received in which the subject of the request is to verify information via VIES or verify the tax activity or discipline of the verified subject?

Forward the request to the competent authority (in most Member States the Tax Administration).

Q Where is possible to find valid contact points in MS for cross border surveillance according Naples II Convention?

The contact points are in the National fact sheets.

Q What is the difference between surveillance on request (Art 11) / spontaneous surveillance (Art 16) and cross-border surveillance as a special form (Art 21)?

Surveillance on request and spontaneous surveillance are forms of surveillance carried out by and on the territory of the requested MS while cross-border surveillance starts in a MS and continues or is extended into the territory of another MS by the officers that initiated the surveillance (only in case of the infringements listed in Art 19.2).

Moreover, cross-border surveillance can only be carried out under the conditions set out in Art. 21 and under the prescriptions described in the National Fact Sheets of each MS.

PART V: NATIONAL FACT SHEETS

Restricted: Available on AFIS Lybrary / EJN



CCU – MS UNIT

National ID:

(APPLICANT NAME)

Date:

**Standard Form for request for assistance and cooperation / for communication of
information***

Convention on mutual assistance and cooperation between customs administrations, drawn up on the basis of Article K3 of the Treaty on European Union (Naples II)

REQUESTED PARTY:

Country:

Service:

CONTACT DETAILS IN APPLICANT MEMBER STATE:

Name:

Position:

Unit:

Telephone:

E-mail:

PURPOSE OF THE REQUEST/INFORMATION:

The purpose of this request for legal assistance - please specify how the obtained information will be used (e.g. as evidence in the preliminary investigation)

SPECIAL FORMS OF COOPERATION*:

Hot pursuit
Cross-border surveillance
Controlled delivery
Covert investigation
Joint special investigation teams

BACKGROUND INFORMATION/ DESCRIPTION OF THE CRIMINAL ACT:

Short summary - significant information about the case + suspect

URGENCY OF THE REQUEST:

Grounds for urgency + the latest date for responses (if known)

CRIME SUSPECT AND TARGET OF THE REQUEST IN THE APPLICANT MEMBER STATE:

1. Legal or natural persons involved:

2. Other entities involved:

(vehicle, goods, telephone numbers, documents)

PENAL PROVISION:

REQUESTED MEASURES:

- 1.
- 2.
- 3.

CONFIDENTIALITY OF THE REQUEST:

ANNEXES:

- 1.
- 2.

* delete as appropriate

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