

*(Acts adopted pursuant to Title VI of the Treaty on European Union)*

## JOINT ACTION

of 21 December 1998

**adopted by the Council on the basis of Article K.3 of the Treaty on European Union, on making it a criminal offence to participate in a criminal organisation in the Member States of the European Union <sup>(1)</sup>**

(98/733/JHA)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article K.3(2)(b) thereof,

Having regard to the report of the high-level group on organised crime, approved by the Amsterdam European Council on 16 and 17 June 1997, and in particular Recommendation No 17 of the action plan,

Whereas the Council considers that the seriousness and development of certain forms of organised crime require strengthening of cooperation between the Member States of the European Union, particularly as regards the following offences: drug trafficking, trafficking in human beings, terrorism, trafficking in works of art, money laundering, serious economic crime, extortion and other acts of violence against the life, physical integrity or liberty of a person, or creating a collective danger for persons;

Whereas, in order to respond to the various threats with which Member States are confronted, a common approach to participation in the activities of criminal organisations is necessary;

Whereas Member States will endeavour, when implementing this joint action, to apply or facilitate the measures relating to the protection of witnesses and/or individuals who cooperate with the judicial process in the fight against international organised crime set out in the Council resolutions of 23 November 1995 <sup>(2)</sup> and 20 December 1996 <sup>(3)</sup>;

Reiterating its confidence in the structure and functioning of the legal systems of the Member States and in their ability to guarantee a fair trial;

Whereas Member States intend to ensure that those who take part in the activities of criminal organisations do not escape investigation and prosecution in connection with

the offences covered by this joint action; to that end, Member States will facilitate cooperation with the judicial process in the investigation and prosecution of such offences;

Recalling that the European Union respects the fundamental rights as described in the European Convention for the Protection of Human Rights and Fundamental Freedoms, of which all Member States are parties, and in particular the provisions relating to freedom of expression, peaceful assembly and freedom of association;

Having examined the views of the European Parliament after consultation in accordance with Article K.6 of the Treaty <sup>(4)</sup>,

HAS ADOPTED THIS JOINT ACTION:

### *Article 1*

Within the meaning of this joint action, a criminal organisation shall mean a structured association, established over a period of time, of more than two persons, acting in concert with a view to committing offences which are punishable by deprivation of liberty or a detention order of a maximum of at least four years or a more serious penalty, whether such offences are an end in themselves or a means of obtaining material benefits and, where appropriate, of improperly influencing the operation of public authorities.

The offences referred to in the first subparagraph include those mentioned in Article 2 of the Europol Convention and in the Annex thereto and carrying a sentence at least equivalent to that provided for in the first subparagraph.

<sup>(1)</sup> Parliamentary scrutiny reservation from the Belgian delegation.

<sup>(2)</sup> OJ C 327, 7. 12. 1995, p. 5.

<sup>(3)</sup> OJ C 10, 11. 1. 1997, p. 1.

<sup>(4)</sup> Opinion delivered on 20 November 1997.

*Article 2*

1. To assist the fight against criminal organisations, each Member State shall undertake, in accordance with the procedure laid down in Article 6, to ensure that one or both of the types of conduct described below are punishable by effective, proportionate and dissuasive criminal penalties:

(a) conduct by any person who, with intent and with knowledge of either the aim and general criminal activity of the organisation or the intention of the organisation to commit the offences in question, actively takes part in:

— the organisation's criminal activities falling within Article 1, even where that person does not take part in the actual execution of the offences concerned and, subject to the general principles of the criminal law of the Member State concerned, even where the offences concerned are not actually committed,

— the organisation's other activities in the further knowledge that his participation will contribute to the achievement of the organisation's criminal activities falling within Article 1;

(b) conduct by any person consisting in an agreement with one or more persons that an activity should be pursued which, if carried out, would amount to the commission of offences falling within Article 1, even if that person does not take part in the actual execution of the activity.

2. Irrespective of whether they have elected to make the type of conduct referred to in paragraph 1(a) or (b) a criminal offence, Member States will afford one another the most comprehensive assistance possible in respect of the offences covered by this Article, as well as those offences covered by Article 3(4) of the Convention relating to extradition between the Member States of the European Union, drawn up by the Council on 27 September 1996.

*Article 3*

Each Member State shall ensure that legal persons may be held criminally or, failing that, otherwise liable for offences falling within Article 2(1) which are committed by that legal person, in accordance with procedures to be laid down in national law. Such liability of the legal person shall be without prejudice to the criminal liability of the natural persons who were the perpetrators of the offences or their accomplices. Each Member State shall ensure, in particular, that legal persons may be penalised in an effective, proportionate and dissuasive manner and that material and economic sanctions may be imposed on them.

*Article 4*

Each Member State shall ensure that the types of conduct referred to in Article 2(1)(a) or (b) which take place in its territory are subject to prosecution wherever in the territory of the Member States the organisation is based or pursues its criminal activities, or wherever the activity covered by the agreement referred to in Article 2(1)(b) takes place.

Where several Member States have jurisdiction in respect of acts of participation in a criminal organisation, they shall consult one another with a view to coordinating their action in order to prosecute effectively, taking account, in particular, of the location of the organisation's different components in the territory of the Member States concerned.

*Article 5*

1. In cases where the Convention relating to extradition between the Member States of the European Union, drawn up by the Council on 27 September 1996, applies, this joint action shall not affect in any manner whatsoever the obligations under the Convention or the interpretation thereof.

2. Nothing in this joint action shall prevent a Member State from making punishable conduct in relation to a criminal organisation which is of broader scope than that defined in Article 2(1).

*Article 6*

During the year following the entry into force of this joint action, appropriate proposals for implementing it shall be submitted by each Member State for consideration by the competent authorities with a view to their adoption.

*Article 7*

This Joint Action shall enter into force on the day of its publication.

*Article 8*

This Joint Action shall be published in the Official Journal.

Done at Brussels, 21 December 1998.

*For the Council*

*The President*

M. BARTENSTEIN