

Initiative of the Kingdom of Denmark with a view to adopting a Council Decision on the investigation and prosecution of *inter alia* war crimes and crimes against humanity

(2002/C 223/09)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Articles 30, 31 and 34(2)(c) thereof,

Having regard to the initiative of the Kingdom of Denmark,

Having regard to the Opinion of the European Parliament,

Whereas:

- (1) The International Criminal Tribunals for the former Yugoslavia and for Rwanda have since 1995 been investigating, prosecuting and bringing to justice violations of international law in connection with war, genocide and crimes against humanity.
- (2) The Rome Statute of the International Criminal Court of 17 July 1998 — which has been signed by all Member States of the European Union — affirms that the most serious crimes of concern to the international community as a whole, in particular genocide, crimes against humanity and war crimes, must not go unpunished and that their effective prosecution must be ensured by taking measures at national level and by enhancing international cooperation.
- (3) The Rome Statute recalls that it is the duty of every State to exercise its criminal jurisdiction over those responsible for such international crimes.
- (4) The Rome Statute emphasises that the International Criminal Court established under it is to be complementary to national criminal jurisdictions.
- (5) The investigation and prosecution of, and exchange of information on, genocide, crimes against humanity and war crimes is to remain the responsibility of national authorities, except as affected by international law.
- (6) Member States are being confronted on a regular basis with persons who were involved in such crimes and who are seeking refuge within the European Union's frontiers.
- (7) The successful outcome of effective investigation and prosecution of such crimes at national level depends to a high degree on close cooperation between the relevant national law enforcement and immigration authorities.
- (8) The successful outcome of effective investigation and prosecution of such crimes also requires close cooperation

at transnational level between authorities of the States Parties to the Rome Statute, including the Member States of the European Union.

- (9) The Member States, in Council Joint Action 98/428/JHA ⁽¹⁾, created a European Judicial Network with a view to setting up national contact points to facilitate judicial cooperation between Member States, particularly to combat serious crime.
- (10) On 13 June 2002, the Council adopted a Decision setting up a European network of contact points in respect of persons responsible for genocide, crimes against humanity and war crimes ⁽²⁾.
- (11) In Council Common Position 2001/443/CFSP of 11 June 2001 on the International Criminal Court ⁽³⁾, the Member States declared that the serious crimes within the jurisdiction of the International Criminal Court are of concern for all Member States, which are determined to cooperate for the prevention of those crimes and for putting an end to the impunity of the perpetrators thereof,

HAS DECIDED AS FOLLOWS:

Article 1

Objective

The aim of this Decision is to strengthen the possibilities afforded to Member States for investigating and prosecuting persons who have committed or participated in the commission of war crimes or similar serious offences, including terrorism.

Article 2

Cooperation between immigration authorities and law enforcement authorities

1. With a view to achieving the objective set out in Article 1, Member States shall take the necessary measures to ensure that the law enforcement authorities are involved to the extent necessary in the processing of applications for residence permits. In that connection, Member States shall implement a system whereby the immigration authorities shall be responsible for informing the law enforcement authorities in cases where, in connection with the processing of an application for a residence permit, facts are established which give rise to a suspicion that the applicant has committed acts as referred to in Article 1 which may lead to prosecution in a Member State or in international criminal courts.

⁽¹⁾ OJ L 191, 7.7.1998, p. 4.

⁽²⁾ OJ L ...

⁽³⁾ OJ L 155, 12.6.2001, p. 19.

2. Member States shall take the necessary measures to ensure that the relevant national law enforcement and immigration authorities are able to exchange the information which they require in order to carry out their tasks under this provision effectively.

Article 3

Investigation and prosecution

1. In so far as a person who has applied for a residence permit is suspected of planning, committing or participating in the commission of war crimes or similar serious crimes, the Member States must ensure, in accordance with national law, that the relevant acts are investigated, and, where justified, prosecuted.

2. Member States shall assist one another in investigating and prosecuting such cases in accordance with relevant international agreements and national law.

3. Where, in connection with the processing of an application for a residence permit, the immigration authorities become aware of facts which give rise to a suspicion that the applicant has participated in acts as described in Article 1, and where it emerges that the applicant has previously sought permission to reside in another Member State, the law enforcement authorities may apply to the competent law enforcement authorities in the latter Member State with a view to obtaining relevant information, including information from the immigration authorities. The exchange of information pursuant to this provision shall take place in accordance with relevant international agreements and national law.

4. In so far as the law enforcement authorities in a Member State become aware that a person suspected of acts as referred to in Article 1 is in another Member State, they shall inform the competent authorities in the latter Member State of their suspicions and the basis thereof. Such information shall be provided in accordance with relevant international agreements and national law.

Article 4

Structures

Member States shall take the necessary measures to ensure that the law enforcement and immigration authorities have the

appropriate resources and structures to guarantee the proper and effective investigation and prosecution of the offences referred to in Article 1. In that connection, Member States shall consider the need to set up or designate specialist units with particular responsibility for investigating and prosecuting the offences in question.

Article 5

Coordination and periodic meetings

1. Member States shall coordinate ongoing efforts. Member States shall exploit as fully as possible cooperation within the European Judicial Network in accordance with Joint Action 98/428/JHA.

2. Member States shall appoint national coordinators for the investigation of war crimes. At the Presidency's initiative, the national coordinators shall meet at regular intervals in conjunction with meetings within the European Judicial Network with a view to exchanging information about experiences, practices and methods. Depending on the circumstances, representatives from the International Criminal Tribunals for the former Yugoslavia and for Rwanda and the International Criminal Court shall also be invited to take part in such meetings.

Article 6

Implementation

Member States shall take the necessary measures to comply with this Decision by [...] (*).

Article 7

Entry into force

This Decision shall take effect on the day of its publication in the *Official Journal of the European Communities*.

Done at Brussels, ...

For the Council

The President

...

(*) Two years after the date on which the Decision is adopted.