

II

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

Initiative of the Kingdom of the Netherlands with a view to the adoption of a Council Decision setting up a European network of contact points in respect of persons responsible for genocide, crimes against humanity and war crimes

(2001/C 295/05)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to Title VI of the Treaty on European Union, and in particular Article 31 and Article 34(2)(c) thereof,

Having regard to the initiative of the Kingdom of the Netherlands,

Having regard to the Opinion of the European Parliament ⁽¹⁾,

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 laws and customs of war, genocide and crimes against humanity.
- (2) The Rome Statute of the International Criminal Court of 17 July 1998 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 the 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 shall be complementary to national criminal jurisdictions.
- (5) All Member States of the European Union have either signed or ratified the Rome Statute.
- (6) Member States are being confronted with persons who were involved in such crimes and are seeking refuge within the European Union's frontiers.
- (7) The successful outcome of effective investigation and prosecution of such crimes at the national level depends to a high degree on close cooperation between the various authorities involved in combating them.
- (8) It is essential that the relevant authorities of the States Parties to the Rome Statute, including the Member States of the European Union, cooperate closely in this connection.

(9) Close cooperation will be enhanced if the Member States make provision for direct communication between centralised, specialised contact points.

(10) Close cooperation between such contact points may provide a more complete overview of persons involved in such crimes, including the question of in which Member States they are the subject of investigation.

(11) This Decision does not affect any convention, agreement or arrangement regarding mutual assistance in criminal matters between judicial authorities,

HAS DECIDED AS FOLLOWS:

Article 1

Designation and notification of contact points

1. Each Member State shall designate a contact point for the investigation of genocide, crimes against humanity and war crimes.
2. Each Member State shall notify the General Secretariat of the Council in writing of its contact point within the meaning of this Decision. The General Secretariat shall ensure that this notification is passed on to the Member States.

Article 2

Collection and exchange of information

1. Each contact point's primary task shall be to collect and manage information on the aforementioned crimes in the framework of their investigation.
2. Member States shall ensure that contact points exchange, spontaneously or on request, any available information that may be relevant to the investigation of such crimes, in accordance with their national powers.

Article 3

Clarification of requests

1. Each request made under this Decision shall be accompanied by a brief statement of the relevant facts known to the requesting contact point. The contact point shall specify in the request how the information sought will be used.

⁽¹⁾ OJ C ...

2. When a request is made in accordance with this Decision, the requested contact point shall provide all relevant information, without the need for a formal letter of request under applicable conventions or agreements between Member States.

3. A contact point may refuse to divulge information which could lead to impairment of a criminal investigation being conducted in the requested Member State or by the International Criminal Court or which, in relation to the latter, would justify invoking Article 72 of its Statute. Any refusal shall be duly explained.

Article 4

Use of information

1. Information or documents obtained under this Decision are intended to be used for the purposes laid down in Article 2(2).

2. When transmitting information or documents pursuant to this Decision, the transmitting contact point may impose restrictions and conditions on the use of information for purposes other than those stipulated in paragraph 1. The receiving contact point shall comply with these restrictions and conditions.

3. Where a Member State wishes to use information or documents transmitted to assist investigation for the purposes referred to in Article 2(2), the transmitting Member State may not refuse its consent to such use unless it does so on the basis of restrictions under its national law or conditions referred to in Article 3(3). Any refusal to grant consent shall be duly explained.

4. The information transmitted shall be protected, in conformity with the Council of Europe Convention of 28 January 1981 for the protection of individuals with regard to automatic processing of personal data and taking account of Recommendation No R(87)15 of 17 September 1987 of the Committee of Ministers of the Council of Europe Regulating the use of personal data in the police sector, by at least the

same rules of confidentiality and protection of personal data as those that apply under the national legislation applicable to the requesting contact point.

Article 5

Transmission of data without request

1. Within the limits of the applicable national law, contact points may exchange information without a request to that effect.

2. Article 4 shall apply in relation to information forwarded under this Article.

Article 6

Implementation

Member States shall ensure that they are able to cooperate fully in accordance with the provisions of this Decision at the latest one year after this Decision takes effect.

Article 7

National responsibility for investigation and prosecution

The investigation and prosecution of, and exchange of information on, genocide, crimes against humanity and war crimes shall continue to be the responsibility of national authorities.

Article 8

Taking effect

This Decision shall take effect on the date of its adoption.

Done at ...

For the Council

The President

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