



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 2 July 2002

**10204/02
ADD 1**

CRIMORG 47

ADDENDUM TO COVER NOTE

from : P. Skytte Christoffersen, Ambassador, Permanent Representative
to : Javier Solana, Secretary-General/High Representative
Subject : Initiative of the Kingdom of Denmark with a view to the adoption by the Council
of a draft Council Decision on the investigation and prosecution of war crimes
and crimes against humanity, etc.

Delegations please find attached the Kingdom of Denmark's explanatory note regarding draft
Council Decision on the investigation and prosecution of war crimes, crimes against humanity etc.

Explanatory note regarding draft Council Decision on the investigation and prosecution of war crimes, crimes against humanity etc.

Background

The International Criminal Tribunals for the former Yugoslavia and for Rwanda have since 1995 been investigating and prosecuting violations of laws and customs of war, genocide and crimes against humanity and bringing the violators to justice.

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 national level and by enhancing international co-operation.

The Rome Statute recalls that it is the duty of every State to exercise its criminal jurisdiction over those responsible for such international crimes. It further emphasises that the International Criminal Court is to be complementary to national criminal jurisdictions.

All Member States of the European Union have either signed or ratified the Rome Statute.

In Council Common Position 2001/443/CFSP of 11 June 2001 on the International Criminal Court, the Member States expressed that the crimes within the jurisdiction of the International Criminal Court are of concern for all Member States and that they are determined to co-operate for the prevention of those crimes and for putting an end to the impunity of the perpetrators thereof.

Member States are regularly being confronted with persons who have been involved in such crimes and who are seeking refuge within the European Union.

In general, the investigation and prosecution of as well as exchange of information on genocide, crimes against humanity, and war crimes is to remain the responsibility of national authorities.

The successful outcome of effective investigation and prosecution of such crimes at national level depends to a high degree on close co-operation between the relevant national law enforcement authorities and the judicial and immigration authorities.

It is essential that the relevant authorities of the States Parties to the Rome Statute, including the Member States of the European Union, co-operate closely in this connection.

To promote this end, the Council on 13 June 2002 decided to establish a European network of contact points in respect of persons responsible for genocide, crimes against humanity and war crimes.

The present draft Council Decision should be seen as a continuation of work along the line set out by the Council Decision of 13 June 2002.

Purpose

The purpose of the draft Council Decision is to strengthen the ability of the authorities in the Member States to investigate and prosecute individuals who have participated in or furthered the committing of genocide, crimes against humanity, war crimes, and other similar grave crimes against the international community. This objective should be promoted by ensuring the necessary co-operation and exchange of information both nationally between the authorities dealing with immigration and law enforcement and between authorities in different Member States.

Without close and intense co-operation between immigration authorities, law enforcement authorities and intelligence services in this area there is a considerable risk that persons responsible for grave acts of international crime could obtain asylum in a Member State without the immigration authorities knowing that the person in question could be linked to such crimes, and without law enforcement authorities realising in due time that the person concerned is actually residing in their country.

Furthermore, an insufficient exchange of information between Member States undoubtedly will result in the loss of important information regarding criminal acts committed in countries from which the Member States are met with a considerable number of asylum seekers. Information that could be vital for both immigration and judicial authorities in their efforts to establish connections between an asylum seeker and criminal events in his country of origin.

In addition to this, it is the aim of the Council Decision to secure the optimal use of information collected in countries, where such information is generally not easily accessible. The lack of such information will often prove to be the biggest obstacle in bringing offenders to justice in such cases. Furthermore, information on procedures, contacts and practices in the countries in which the crimes are committed should also to the largest possible extent be at the disposal of all Member States in order to avoid unnecessary duplication of efforts.

Due to the complex nature of most cases relating to these types of crime it is considered that it will facilitate considerably the effectiveness of efforts by Member States both individually and jointly, if relevant knowledge and expertise is accumulated in a few specialised units dealing especially with the investigation and prosecution of such crimes. Such accumulation of knowledge, expertise, and responsibility within law enforcement authorities will also facilitate the rapid exchange of relevant information between these and the immigration authorities.

Legal basis

The draft Council decision is based on Articles 30, 31 and 34(2)(b) of the Treaty on European Union. The draft deals with both police and judicial co-operation, in regard to both investigation and proceeding of cases relating to the crimes in question, as well as with the collection and exchange of information in regard to these crimes. It further addresses the issue of increased compatibility in structures and procedures in order to ensure effective co-operative. The objectives of the draft Council Decision are all in line with the aim of Title VI of the treaty.

The principles of subsidiarity and proportionality

The draft Council Decision is not considered to be in conflict with the principles of subsidiarity and proportionality.

Financial consequences

The Council Decision is not expected to entail financial implications on the budgets of the European Union or the Member States.

Content

Article 1:

Article 1 defines the objective of the Draft Council Decision. The objective is to strengthen the ability of Member States to effectively investigate and prosecute individuals who have participated in or furthered war crimes or other serious crimes, including terrorism.

Article 2:

Article 2 specifies that Member States are obliged to ensure that relevant law enforcement authorities are sufficiently involved in the procedures of the immigration authorities in order to achieve the objective defined in Article 1. In this connection, Member States should prescribe the immigration authorities to inform law enforcements authorities when they come across information that may give rise to suspicion that a given person could have been involved in acts of crime covered by the Council Decision and which might be prosecuted in either a Member State or before the International Criminal Court or international tribunals.

This article, furthermore, calls upon Member States to adopt the legislation necessary for the authorities to exchange relevant information in regard to the cases covered by the Council Decision.

Article 3

According to article 3, Member States are obliged to ensure that whenever there are grounds for suspicion that an asylum seeker has been involved in war crimes or similar grave crimes the case is investigated and prosecuted as appropriate in accordance with national law. Furthermore, it follows from article 3, that in regard to such cases member states should yield each other all necessary assistance in accordance with national law and relevant international agreements.

It is furthermore stressed, that immigration authorities that become aware of circumstances that could lead to suspect, that an asylum seeker has participated in actions as described in article 1, and that the person in question has previously been in contact with immigration authorities in an other member state, the authorities should procure whatever relevant information is accessible in this other member states, from both law enforcement and immigration authorities. Exchange of information should in this regard take place in accordance with relevant international agreements and practices.

Similarly, any authorities in one member state that becomes aware that a person suspected of violations, as described in article 1 is staying in or passing through an other member state, they should immediately inform the relevant authorities in this other member state of the suspicion and the grounds for it.

Article 4

In relation to structure and resources, article 4 calls on the member states to ensure that both law enforcement and immigration authorities are equipped with sufficient resources and efficient structures to ensure the effective investigation and prosecution of cases covered by the decision. The draft in this regard specifically calls on member states to consider to establish or appoint specialized units with the specific responsibility of handling this type of cases.

Article 5

According to article 5 Member States should continuously co-ordinate their efforts. To this end, Member States should to the largest possible extend use the existing co-operation mechanism established within the European Judicial Network established by Council Joint Action 98/428/JHA of 29 June 1998.

According to the draft Council Decision Member States are furthermore committed to designate a national co-ordinator regarding the investigation of war crimes and other crimes covered by the decision. These contact points should regularly meet in connection to the meetings of the Judicial Network in order to exchange information on experience, practice, and methods. Such meetings should be convened by the Presidency. As appropriate the Presidency may decide to invite representatives of the International Criminal Court and the international tribunals for the former Yugoslavia and Rwanda.

Article 6

Article 6 establishes the time frame for carrying out the necessary legal and administrative changes in the member states. This time frame should be fixed to two years after adoption of the decision by the Council.

Article 7

Article 7 stipulates that the decision enters into force on the day of publication in the Official Journal of the European Communities.