

SEMDOC

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12089/95

LIMITE

JUSTPEN 163

NOTE

from : General Secretariat of the Council

to : Permanent Representatives Committee (Part 2)

No. prev. doc.: 11629/95 JUSTPEN 156

Subject: Draft joint action concerning action to combat racism and xenophobia

– Follow-up to the Council (JHA) on 23 November 1995

1. The Council (JHA) examined the above draft text at its meeting on 23 November 1995. The amended draft text produced following the Council's discussion is attached in Annex I. The draft statements by certain delegations for entry in the minutes of the Council meeting at which the joint action is adopted are given in Annex II.
2. The President of the Council (JHA) noted that:
 - 14 delegations agreed to the draft text (subject to a parliamentary scrutiny reservation by the Netherlands delegation and linguistic scrutiny reservations by the Finnish and Swedish delegations);
 - as well as its parliamentary scrutiny reservation, the United Kingdom delegation maintained its reservation on the draft text and more specifically on:
 - = the binding legal form of the instrument to be adopted (joint action),
 - = the content of the draft text, parts of which it said were incompatible with United Kingdom legislation.

The United Kingdom delegation's position is set out in detail in its note in 12035/95 JUSTPEN 161.

3. The President of the Council (JHA) concluded that the dossier would be forwarded to the General Affairs Council and, if necessary, to the Madrid European Council.

JOINT ACTION

of _____

adopted by the Council on the basis of Article K.3
of the Treaty on European Union
concerning action to combat racism and xenophobia

THE COUNCIL OF THE EUROPEAN UNION

Having regard to Article K.3(2)(b) of the Treaty on European Union,

Having regard to the initiative from the Kingdom of Spain,

Whereas the Member States regard the adoption of rules in connection with action to combat racism and xenophobia as a matter of common interest, in accordance with Article K.1(7) of the Treaty in particular;

Whereas regard should be had to the conclusions on racism and xenophobia adopted by the European Council in Corfu on 24 and 25 June 1994, in Essen on 9 and 10 December 1994, and in Cannes on 26 and 27 June 1995;

Whereas the Consultative Commission on Racism and Xenophobia, established by the Corfu European Council, adopted recommendations;

Whereas, despite the efforts made over recent years by the Member States, racist and xenophobic offences are still on the increase;

Concerned at the differences between some criminal law systems regarding the punishment of specific types of racist and xenophobic behaviour, which constitute barriers to international judicial cooperation;

Acknowledging that international cooperation by all States, including those which are not affected at domestic level by the problem of racism and xenophobia, is necessary to prevent the perpetrators of such offences exploiting the fact that racist and xenophobic activities are classified differently in different States by moving from one country to another in order to escape criminal proceedings or avoid serving sentences and thus pursue their activities with impunity;

Emphasizing that the right to freedom of expression implies duties and responsibilities, including respect for the rights of others, as laid down in Article 19 of the United Nations International Covenant on Civil and Political Rights of 19 December 1966;

Determined, in keeping with their common humanitarian tradition, to guarantee that, above all, Articles 10 and 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 are complied with;

Wishing to build upon the work begun within the framework of Title VI of the Treaty during 1994 concerning the criminal aspects of the fight against racism and xenophobia,

HAS DECIDED AS FOLLOWS:

TITLE I

- A. In the interests of combatting racism and xenophobia, each Member State shall undertake, in accordance with the procedure laid down in Title II below, to ensure effective judicial cooperation in respect of offences based on the following types of behaviour, and, if necessary for the purposes of that cooperation, either to take steps to see that such behaviour is punishable as a criminal offence or, failing that, and pending the adoption of any necessary provisions, to derogate from the principle of double criminality for such behaviour:

- (a) Public incitement to discrimination, violence or racial hatred in respect of a group of persons or a member of such a group defined by reference to colour, race, religion or national or ethnic origin.
 - (b) Public condoning, for a racist or xenophobic purpose, of crimes against humanity and human rights violations.
 - (c) Public denial of the crimes defined in Article 6 of the Charter of the International Military Tribunal appended to the London Agreement of 8 April 1945 insofar as it includes behaviour which is contemptuous of or degrading to a group of persons defined by reference to colour, race, religion or national or ethnic origin.
 - (d) Public dissemination or distribution of tracts, pictures or other material containing expressions of racism or xenophobia.
 - (e) Participation in the activities of groups, organizations or associations, which involve discrimination, violence, or racial, ethnic or religious hatred.
- B. In order to improve judicial cooperation between Member States in the event of investigations into and/or proceedings against offences based on the types of behaviour listed in paragraph A, each Member State shall undertake, in accordance with the procedure laid down in Title II below, to take measures necessary for:
- (a) Seizure and confiscation of tracts, pictures or other material containing expressions of racism or xenophobia intended for public dissemination where such material is offered to the public in the territory of a Member State.
 - (b) Acknowledgement that the types of behaviour listed in paragraph A should not be regarded as political offences justifying refusal to comply with requests for mutual legal assistance.
 - (c) The laying of information with a view to legal proceedings or confiscation in cases where it appears that tracts, pictures or other material containing expressions of racism or xenophobia are being stored in a Member State for the purposes of distribution or dissemination in another Member State.

(d) The establishment of contact points in the Member States which would be responsible for collecting and exchanging any information which might be useful for investigations and proceedings against offences based on the types of behaviour listed in paragraph A.

C. Nothing in this Joint Action may be interpreted as affecting Member States' obligations under the international instruments listed below. Member States will refer to the definitions and principles contained therein when implementing this Joint Action:

- The Convention relating to the Status of Refugees of 28 July 1951, as amended by the New York Protocol of 31 January 1967.
- The United Nations Convention on Genocide of 9 December 1948.
- The International Convention on the Elimination of All Forms of Racial Discrimination of 7 March 1966.
- The Geneva Conventions of 12 August 1949 and Protocols I and II of 12 December 1977 to those Conventions.
- Resolutions 827(93) and 955(94) of the United Nations Security Council.
- Council Resolution of ... ⁽¹⁾ on the protection of witnesses in the fight against international organized crime in cases of criminal proceedings for the types of behaviour listed in paragraph A, if witnesses have been summoned in another Member State.

TITLE II

The Member States shall refer the provisions necessary for implementation of this Joint Action for adoption by their competent national authorities.

The Council will ensure that Member States have acquitted themselves of their obligations under this Joint Action by the end of June 1997.

This Joint Action will be published in the Official Journal of the European Communities.

(¹) OJ No ..., ..., ...

DRAFT STATEMENTS
FOR ENTRY IN THE COUNCIL MINUTES
WHEN THE JOINT ACTION CONCERNING ACTION
TO COMBAT RACISM AND XENOPHOBIA
IS FINALLY ADOPTED

1. Statement by the Greek delegation re Title I.B(b):

"Greece interprets Title I.B(b) in the light of those provisions of its Constitution which prohibit any action being taken against persons facing prosecution on political grounds."

2. Statement by the French delegation re Title I.C, fourth indent:

"France points out that Additional Protocol I of 8 June 1977 to the Geneva Conventions of 1949 cannot be invoked against it, in that France has neither ratified nor signed that instrument and that it cannot be taken as a translation of international customary law applicable in armed conflicts."
