EUROPEAN UNION
THE COUNCIL

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SEMDOC
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7808/1/98
REV 1

LIMITE

JUSTPEN 44

BM 250

NOTE

from : K.4. Committee

to : COREPER

No. prev. doc.: 5332/98 JUSTPEN 8

Subject: Report to the Council on the implementation of the Joint Action adopted on 15 July 1996 concerning action to combat racism and xenophobia.

At its meeting on 27 and 28 April 1998, the K.4 Committee agreed, subject to a scrutiny reserve from Germany, on the report set out in 7808/98 JUSTPEN 42 subject to some minor adjustments.

The relevant amendments have been incorporated in the attached revised report and, in accordance with the conclusions of the K.4 Committee, COREPER is invited to recommend that Council should:

- take note of the attached report on the implementation of the 1996 Joint Action concerning action to combat racism and xenophobia; and

- decide to forward the report, for information, to the European Parliament, the Council of Europe and the European Monitoring Centre for Racism and Xenophobia.

Joint Action of 15 July 1996 concerning action to combat racism and xenophobia

- Report to JHA Council -

Introduction

1.1 On 15 July 1996, the JHA Council adopted a joint action concerning action to combat racism and xenophobia. The main objective of the Joint Action is to ensure that Member States are in a position to assist each other in the area of judicial cooperation in the fight against racism and xenophobia. In that context the Joint Action refers to the need to prevent the perpetrators of offences linked to racism and xenophobia from exploiting the fact that racist and xenophobic activities are classified differently in Member States which could give rise to the situation that certain persons could seek to escape criminal proceedings or avoid serving sentences by moving from one country to another.

1.2 The Joint Action provides that the Council will assess the fulfilment of its obligations by Member States, taking account of the annexed declarations, by the end of June 1998. The purpose of this report, which has been prepared on the basis of material provided by Member States, is to enable the Council to carry out that assessment in accordance with the terms of the Joint Action.

1.3 A number of issues arising from the Joint Action are highlighted and dealt with under separate headings in the report. In addition it is proposed that a further review of the implementation of the Joint Action should be undertaken by the Council before the end of June 2000.

Offences relating to racism and xenophobia

2.1 Paragraph A of Title I of the Joint Action requires Member States to provide each other with effective judicial cooperation in respect of offences based on specific types of behaviour involving racism and xenophobia and, if necessary, 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. This portion of the Joint Action is the subject of declarations made by Denmark and the United Kingdom to the effect that those Member States will apply its provisions where the relevant behaviour is threatening or insulting etc.

2.2 Most Member States have indicated that the forms of behaviour referred to in Paragraph A are punishable as offences in their jurisdictions. Where Member States have reported that not all the relevant behaviour may be covered by their criminal law they have stated that they are reviewing their legislation in order to ensure that the activities listed in the Joint Action can be dealt with as criminal offences.

Judicial cooperation (general)

3.1 Under Paragraph B of Title I of the Joint Action, Member States are obliged to make arrangements for judicial cooperation in relation to offences based on the types of behaviour mentioned in Paragraph A. In that context Member States have made it clear that they are in a position to apply the instruments which operate in the field of judicial cooperation in respect of the offences in question (European Convention on Extradition, European Convention on Mutual Assistance in Criminal Matters, Schengen etc.).

Seizure and confiscation of material at the request of another Member State

4. While the amount of practical experience in this area appears to be limited most Member States have confirmed that they could seize and confiscate racist and xenophobic material on their territory which is intended to be offered to the public in another Member State. One Member State has pointed out, however, that it has potential constitutional difficulties in this area. Another Member State is considering legislation in that area.

Political offences

5.1 One of the grounds on which judicial cooperation may be refused is that the offence in respect of which the cooperation is sought is a political offence. In that regard the Joint Action obliges Member States to acknowledge that the types of behaviour identified in Paragraph A should not be accepted as political offences.

5.2 It is clear from the material provided by Member States that their authorities would not regard the offences covered by the Joint Action as political offences for the purpose of international judicial cooperation.

Provision of information to another Member State

6. Member States are satisfied that, as required by the Joint Action, they can provide other Member States with information for use in possible legal proceedings, including confiscation proceedings, in cases where it appears that racist or xenophobic material is being stored in one Member State for distribution in another Member State.

Contact points

7.1 One of the obligations arising from the Joint Action is that contact points should be established in the Member States with responsibility for collecting and exchanging information which might be useful for investigations and proceedings relating to offences based on the types of behaviour listed in Paragraph A.

7.2 The current position is that while most Member States have contact points for the purposes of the Joint Action some Member States have yet to make such arrangements. Where contact points are in operation different approaches have been adopted with the result that in some cases the role of contact point has been assigned to judicial authorities and in others it has been allocated to law enforcement agencies. In that connection it might be noted that the question of establishing the contact points and making them known to other Member States has not been considered to date and it could be worthwhile to pursue these matters further. One suggestion that has been put forward is that the relevant functions could be dealt with by the proposed judicial network.

General conclusions and proposal for further review

8.1 The adoption of the Joint Action by the Council reflects the commitment of all the Member States to the fight against racism and xenophobia and, in particular, a recognition that judicial cooperation can play an important role in that area.

8.2 The picture that has emerged from the information supplied by Member States is that, to a very significant degree, they have implemented the provisions of the Joint Action. The elements of the Joint Action to which full effect has yet to be given by all Member States are also being addressed. Notwithstanding the progress that has been achieved it would appear that additional steps could be undertaken, for example in the area of contact points, to develop the effectiveness of the Joint Action and, in the circumstances, the Council is invited to decide to further review the implementation of the Joint Action by the end of June 2000.

Summary of replies to questionnaire re: Joint Action to combat racism and xenophobia (JUSTPEN 8/98)

	Offences for A(a)-(e) of JA	Judicial Cooperation	Further Proposals	Changes made for JA	Seizure and confiscation	Political offences	Provision of information	Contact points
Austria	Yes	Schengen, etc.	No	New law in 1996	Yes	No difficulty	Yes	Consider use of judicial network
Belgium	Yes	Use jud. coop. instruments	No	No	Yes	No difficulty	Yes	Under consideration
Denmark	Yes	Can use jud. coop. instruments	No	No	Yes	No difficulty	Yes	Nat. Police Commissioner
Finland	(a)-(d) Yes (e)?	Can provide	Considering whether necessary	Taking account of JA	Yes	No difficulty	Yes	Use general coop. contact points
France	Yes	Can use jud. coop. instruments	No	No	Yes	No difficulty	Yes	Use jud. coop. and other contacts
Germany	Yes	Use jud. coop. instruments	No	No	Yes	No difficulty	Yes	Federal Ministries of Interior & Justice
Greece	Yes	Rely on jud. coop. instruments	Considering new measures	No	Constitutional difficulty	No difficulty	Yes	Public Prosecutors, etc.

	Offences for A(a)-(e) of JA	Judicial Cooperation	Further Proposals	Changes made for JA	Seizure and confiscation	Political offences	Provision of information	Contact points
Ireland	Yes	Use jud. coop. instruments	Examining current legislation	Taking account of JA	Yes	No difficulty	Yes	Dept. of Justice, Equality and Law Reform.
Italy	Yes	Can provide	No	No	Yes	No difficulty	Yes	Prosecutors
Luxemburg	Yes	Rely on jud. coop. instruments	No	Yes - 1997 legislation	Yes	No difficulty	Yes	Prosecutors
Netherlands	Yes	Can provide	No	No	Yes	No difficulty	Yes	Prosecutors, etc
Portugal	(a), (b), (d) and (e) Yes	Can use jud. coop. instruments	Considering new measures	Proposals will give full effect to JA	Yes	No difficulty	Yes	Attorney General's Office
Spain	Yes	Can use jud. coop. instruments	No	No	Yes	No difficulty	Yes	Being considered
Sweden	Yes	Can use jud. coop.	Considering new measures	No	Yes	No difficulty	Yes	Security Service
United Kingdom	Yes	Can use jud. coop. instruments	Increasing penalties, etc.	Taking account of JA	Legislation being considered	No difficulty	Yes	Should be via police channels