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

JOINT ACTION

of 29 June 1998

adopted by the Council on the basis of Article K.3 of the Treaty on European Union, on good practice in mutual legal assistance in criminal matters

(98/427/JHA)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article K.3(2)(b) thereof,

Having regard to the Report from the high-level group on organised crime [1] approved by the European Council held at Amsterdam on 16 and 17 June 1997, and in particular Recommendation No 16 of the Report,

Having regard to the results of the seminar on 'Improving judicial cooperation and protecting human rights' held in Luxembourg on 1 and 2 October 1997,

Taking into account the Joint Action 98/428/JHA of 29 June 1998, adopted by the Council on the basis of Article K.3 of the Treaty on European Union, on the creation of a European Judicial Network [2], and in particular Articles 4 and 5 thereof,

Having regard to the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959, other conventions in force in this area and the proposed Convention on mutual assistance in criminal matters between the Member States,

Whereas it is necessary to make further practical improvements regarding mutual legal assistance between the Member States, particularly for the purpose of combating serious crime,

Having examined the views of the European Parliament [3], following consultation carried out by the Presidency in accordance with Article K.6 of the Treaty,

HAS ADOPTED THE FOLLOWING JOINT ACTION:

Article 1

Statements of good practice

1. Each Member State shall deposit with the General Secretariat of the Council of the European Union within 12 months of the coming into force of this Joint Action a Statement of good practice in executing requests, including transmission of results, from other Member States and sending requests to other Member States for legal assistance in criminal matters.

2. The General Secretariat of the Council shall translate the Statements referred to in paragraph 1 into the official languages of the Community and circulate the translations to Member States.

3. The Statements by each Member State referred to in paragraph 1 shall, without prejudice to the provisions of the proposed Convention on mutual assistance in criminal matters between the Member States, and subject to the Declaration annexed to this Joint Action, include undertakings to promote the following practices in accordance with its national law and legal procedures:

(a) where requested to do so by the requesting Member State, to acknowledge all requests and written enquiries concerning the execution of requests unless a substantive reply is sent quickly; the requesting Member State may not require an acknowledgment unless the request is marked 'urgent' by that Member State or, in its view, an acknowledgment is necessary in the light of the circumstnaces of the case;

(b) when acknowledging the requests and enquiries referred to in this paragraph, to provide the requesting authority with the name and contact details, including telephone and fax numbers, of the authority, and if possible the person, responsible for executing the request;

(c) to give priority, as far as it is not contrary to the law of the requested Member State, to requests which have clearly been marked 'urgent' by the requesting authority; and to treat requests, whether or not marked 'urgent', no less favourably than comprable enquiries made in the requested Member State on behalf of that Member State's own authorities;

[1] OJ C 251, 15. 8. 1997, p. 1.
[2] See page 4 of this Official Journal.
[3] Opinion delivered on 3 April 1998 (OJ C 138, 4. 5. 1998).

(d) where the assistance requested cannot be executed in whole or in part, to give the requesting authorities a written or oral report explaining the difficulty and where possible offering to consider jointly with the requesting authority how the difficulty might be overcome;

(e) where it is foreseeable that the assistance cannot, or cannot fully, be provided within any deadline set by the requesting Member State and that this will impair proceedings in the requesting Member State, promptly to give its authority a written or oral report, and any further reports requested by that authority explaining when the assistance requested is likely to be provided;

(f) to submit requests for assistance as soon as the precise assistance needed is identified and, where a request is marked 'urgent' or a deadline is indicated, to explain the reasons for the urgency or deadline; the Statement shall include an undertaking not to mark as 'urgent' requests which are of minor importance;

(g) to ensure that requests are submitted in compliance with the relevant treaty or other international arrangements;

(h) when submitting requests for assistance, to provide the requested authorities with the name and contact details, including telephone and fax numbers, of the authority and, if possible, the person responsible for issuing the request.

4. Each Member State shall bring its Statement to the attention of its judicial or competent authorities, inviting them to promote measures within their competence as may be necessary with a view to its implementation.

5. Any Statement submitted in accordance with this Article may, without prejudice to paragraph 3, be modified at any time by the Member State which made it by means of a further Statement deposited with the General Secretariat of the Council. Any such further Statement shall be for the purposes of further improving good practice in executing requests for legal assistance in criminal matters.

Article 2

Review of performance

Without prejudice to the mechanism for evaluating the application and implementation at national level of international undertakings in the fight against organised crime, established in Joint Action 97/827/JHA [1], each Member State shall periodically review compliance with its Statements made in accordance with Article 1. The mechanism for such review shall be for each Member State to determine having regard to its own arrangements for legal assistance in criminal matters.

Article 3

European Judicial Network

The General Secretariat of the Council shall make the Statements referred to in Article 1(1) available to the European Judicial Network as soon as they are deposited. The Network shall take stock of the Statements in the light of its own competencies and experience, and may make any proposals it considers appropriate with a view to improving legal assistance in criminal matters, including finding common methods for evaluation of performance.

Article 4

Review

The Council shall review this Joint Action in the light of the results of the operation of the mechanism for evaluating the application and implementation at national level of international undertakings in the fight against organised crime, established in Joint Action 97/827/JHA.

Article 5

Entry into force

This Joint Action shall enter into force on the day of its publication.

Article 6

Publication

This Joint Action shall be published in the Official Journal.

Done at Luxembourg, 29 June 1998.

For the Council

The President

R. COOK

[1] OJ L 344, 15. 12. 1997, p. 7.

ANNEX

DECLARATION BY THE FEDERAL REPUBLIC OF GERMANY

The Federal Republic of Germany states that the German authorities will issue acknowledgements pursuant to Article 1(3)(a) and (b) of the Joint Action on good practice in mutual legal assistance in criminal matters if they are of the opinion that these are appropriate for expediting the execution of the relevant request or the written enquiry.