

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

JOINT POSITION

of 29 March 1999

defined by the Council on the basis of Article K.3 of the Treaty on European Union, on the proposed United Nations convention against organised crime

(1999/235/JHA)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Articles K.3(2) and K.5 thereof,

Recognising the importance of judicial cooperation in criminal matters and of police cooperation for the purposes of preventing and combating all serious forms of international crime, as provided for in Article K.1 of the Treaty,

Whereas the Member States regard the combating of organised crime as a matter of common interest;

Whereas the European Council meeting in Amsterdam in June 1997 approved the Action Plan of the High-Level Group on Organised Crime which contains extensive proposals for strengthening the fight against organised crime;

Whereas account must be taken of the measures that have already been adopted by the European Union or are in the course of preparation or adoption for the purpose of implementing that Action Plan and, in particular, Joint Action 98/733/JHA of 21 December 1998 on making it a criminal offence to participate in a criminal organisation in the Member States of the European Union⁽¹⁾;

Whereas arrangements have been made for the development and negotiation of a United Nations convention to combat organised crime;

Whereas the Council in its Conclusions of 5 October 1998 requested the Presidency to propose one or several Joint Positions, in accordance with Article K.3 of the Treaty on European Union, in relation to the draft United Nations convention and its protocols;

Whereas it is desired to contribute as fully as possible to the negotiation of the proposed convention and to avoid incompatibility between the proposed convention and instruments drawn up in the Union,

HAS DEFINED THIS JOINT POSITION:

Article 1

1. Member States shall support the drawing up of the proposed United Nations convention against organised crime and any possible protocols. Member States shall advocate the inclusion in the draft convention of provisions which will facilitate to the maximum extent possible the effective prevention, prosecution and investigation of organised crime.

2. Member States shall ensure that the provisions of the draft convention relating to the obligation to criminalise particular activities are consistent in particular with Articles 1 and 2 of Joint Action 98/733/JHA.

3. Insofar as the other provisions of the draft convention are concerned, it should apply as broadly as possible to the activities of criminal organisations and to international cooperation for combating such organisations. In principle, the relevant provisions of the draft convention should encompass the activities of persons, acting in concert with a view to committing serious crime, involved in any criminal organisation which has a structure and is, or has been, established for a certain period of time. They should not be limited to groups with a highly developed structure or enduring nature, such as mafia type organisations; and the organisations need not necessarily have formally defined roles for their participants or continuity of membership.

⁽¹⁾ OJ L 351, 29. 12. 1998, p. 1.

4. The provisions to be included in the draft convention on international cooperation should provide appropriate safeguards for the protection of human rights and facilitate such cooperation. They should apply in a situation where, due to the fact that an investigation is at a preliminary stage, it is not possible for a requested state to establish with certainty that a particular offence is connected to organised crime. It might also be useful if certain criteria were to be specified for the purpose of indicating links with organised crime.

5. Insofar as measures to combat money laundering are concerned, the convention should extend to a broad range of offences and, in particular, should be consistent with the 40 recommendations of the Financial Action Task Force.

6. Any provisions in the draft convention which deal with criminal assets should not be inconsistent with, and should take account of, Joint Action 98/699/JHA of 3 December 1998 on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds from crime⁽¹⁾.

7. The relevant provisions of the draft convention could, as appropriate, be modelled on the 1998 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. In addition they should take full account of the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime.

Article 2

In the negotiations on the proposed United Nations convention and any possible protocols, Member States shall, as far as is practicable, coordinate their positions, at

the Presidency's initiative, and seek to arrive at common standpoints on all issues which have significant implications for the interests of the Union. The Commission shall be fully associated with this work. When necessary, in the light of the manner in which the negotiations develop, consideration shall be given to which further steps need to be taken.

Article 3

Member States shall ensure that the provisions of the proposed United Nations convention and any possible protocols are not inconsistent with instruments drawn up between them.

Article 4

The Council shall endeavour to achieve further Joint Positions, as necessary, in relation to the draft convention and particularly in connection with any possible protocols.

Article 5

This Joint Position shall be published in the Official Journal.

Done at Brussels, 29 March 1999.

For the Council

The President

F. MÜNTEFERING

⁽¹⁾ OJ L 333, 9. 12. 1998, p. 1.