

# Official Journal

## of the European Communities

ISSN 0378-6978

L 63

Volume 40

4 March 1997

English edition

## Legislation

### Contents

#### *Acts adopted pursuant to Title V of the Treaty on European Union*

97/153/CFSP:

- ★ Council Decision of 24 February 1997 amending Joint Action 96/406/CFSP concerning action by the Union to support the electoral process in Bosnia and Herzegovina ..... 1

#### *Acts adopted pursuant to Title VI of the Treaty on European Union*

97/154/JHA:

- ★ Joint action of 24 February 1997 adopted by the Council on the basis of Article K.3 of the Treaty on European Union concerning action to combat trafficking in human beings and sexual exploitation of children ..... 2

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

# COUNCIL DECISION

of 24 February 1997

**amending Joint Action 96/406/CFSP concerning action by the Union to support the electoral process in Bosnia and Herzegovina**

(97/153/CFSP)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union and in particular Article J.3 thereof,

Having regard to Joint Action 96/406/CFSP of 10 June 1996 adopted by the Council on the basis of Article J.3 of the Treaty on European Union, concerning action by the Union to support the electoral process in Bosnia and Herzegovina<sup>(1)</sup>,

Whereas, in view of the general and the specific objectives set out in that Joint Action, the scope of Article 3 (2) thereof needs to be specified,

HAS DECIDED AS FOLLOWS:

## *Article 1*

The first subparagraph of Article 3 (2) of Joint Action 96/406/CFSP shall be replaced by the following text:

'2. The European Union's supervisors shall participate, within the framework of the OSCE's mission, in supervising the whole electoral process, and in particular in supervising the national and local elections. The supervision activities shall be financed from the amount referred to in paragraph 1.'

## *Article 2*

This Decision shall enter into force on the date of its adoption.

## *Article 3*

This Decision shall be published in the Official Journal.

Done at Brussels, 24 February 1997.

*For the Council*  
*The President*  
H. VAN MIERLO

---

<sup>(1)</sup> OJ No L 168, 6. 7. 1996, p. 1.

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

## JOINT ACTION

of 24 February 1997

adopted by the Council on the basis of Article K.3 of the Treaty on European Union concerning  
action to combat trafficking in human beings and sexual exploitation of children

(97/154/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 initiative of the Kingdom of Belgium,

Whereas the establishment of common rules for action to combat trafficking in human beings and sexual exploitation of children is likely to contribute to the fight against certain unauthorized immigration and to improve judicial cooperation in criminal matters, which are of common interest to the Member States within the meaning of Article K.1 (3) and (7) of the Treaty;

Having regard to the Resolution on trafficking in human beings adopted by the European Parliament on 18 January 1996<sup>(1)</sup> and the Resolution on victims of violence who are minors, adopted on 19 September 1996<sup>(2)</sup>;

Bearing in mind the Recommendations on combating trafficking in human beings adopted by the Council on 29 and 30 November 1993;

Bearing in mind the conclusions of the European Conference on trafficking in women, held in Vienna on 10 and 11 June 1996;

Bearing in mind the conclusions of the World Congress against commercial sexual exploitation of children, held in Stockholm from 27 to 31 August 1996;

Recalling Article 34 of the Convention on the Rights of the Child of 20 November 1989;

Whereas trafficking in human beings and sexual exploitation of children constitute serious infringements of fundamental human rights, in particular human dignity;

Aware of the need to take account of the particularly vulnerable position of the victims of this type of crime, in particular the vulnerability of children;

Whereas trafficking in human beings and sexual exploitation of children may constitute an important form of international organized crime, the extent of which within the European Union is becoming increasingly worrying;

Anxious to implement the necessary measures to put a stop to trafficking in human beings and the sexual exploitation of children;

Taking into account the fact that the Council already has decided to take effective measures against the trafficking in human beings by the adoption of a Joint Action to set up a Directory of Centres of excellence<sup>(3)</sup> and by establishing an Exchange Programme for training of persons competent in this matter<sup>(4)</sup>;

Considering that the Member States of the European Union concerning certain types of trafficking in human beings and sexual exploitation of children should take concerted action to counter obstacles, where they exist, to effective judicial cooperation on the subject, in accordance with the multiannual programme on cooperation in Justice and Home Affairs, adopted by the Council on 14 October 1996;

Aware of the need for a multi-disciplinary approach to the question of trafficking in human beings and sexual exploitation of children;

Noting that the terms used in this Joint Action do not refer to any specific legal system or national law but

<sup>(1)</sup> OJ No C 32, 5. 2. 1996, p. 88.

<sup>(2)</sup> OJ No C 320, 28. 10. 1996.

<sup>(3)</sup> OJ No L 342, 31. 12. 1996, p. 2.

<sup>(4)</sup> OJ No L 322, 12. 12. 1996, p. 7.

rather should be interpreted in the light of the legal systems of Member States;

Noting that the provisions of this Joint Action are without prejudice to obligations of Member States under conventions to which they are bound, such as the 1950 UN Convention for the suppression of the traffic in persons and of the exploitation of the prostitution of others, or to the right of Member States to take measures which further enhance the protection of children or combat trafficking in human beings,

HAS ADOPTED THIS JOINT ACTION:

#### TITLE I

##### Aims

A. For the guidance of Member States in applying this Joint Action, and without prejudice to more specific definitions in the Member States' legislation, the following concepts are understood, in the context of this Joint Action:

- (i) 'trafficking', as any behaviour which facilitates the entry into, transit through, residence in or exit from the territory of a Member State, for the purposes set out in point B (b) and (d);
- (ii) 'sexual exploitation' in relation to a child, as the following behaviour:
  - (a) the inducement or coercion of a child to engage in any unlawful sexual activity;
  - (b) the exploitative use of a child in prostitution or other unlawful sexual practices;
  - (c) the exploitative use of children in pornographic performances and materials, including the production, sale and distribution or other forms of trafficking in such materials, and the possession of such materials;
- (iii) 'sexual exploitation' in relation to an adult, as at least the exploitative use of the adult in prostitution.

B. In order to improve judicial cooperation in the context of combating trafficking in human beings and sexual exploitation of children, each Member State undertakes, while respecting the constitutional rules and legal traditions of each Member State, to review their relevant national laws concerning the measures set out in Titles II and III relating to the following intentional types of behaviour, in accordance with the procedure set out in Title IV:

- (a) Sexually exploiting a person other than a child for gainful purposes, where:
  - use is made of coercion, in particular violence or threats, or
  - deceit is used, or
  - there is abuse of authority or other pressure, which is such that the person has no real and acceptable choice but to submit to the pressure or abuse involved;
- (b) trafficking in persons other than children for gainful purposes with a view to their sexual exploitation under the conditions set out in paragraph (a);
- (c) sexually exploiting or sexually abusing children;
- (d) trafficking in children with a view to their sexual exploitation or abuse.

#### TITLE II

##### Measures to be taken at national level

- A. Each Member State shall review existing law and practice with a view to providing that:
  - (a) the types of behaviour set out in Title I B are classified as criminal offences;
  - (b) these offences, and, with the exception of the possession referred to in Title I A (ii) (c), participation in or attempt to commit them, are punishable by effective, proportionate and dissuasive criminal penalties;
  - (c) legal persons may, where appropriate, be held administratively liable in connection with the offences listed in Title I B or criminally responsible for such offences, committed on behalf of the legal person in accordance with modalities to be defined in the national law of the Member State. That liability of the legal person is without prejudice to the criminal responsibility of the physical persons who have been accomplices in or instigators of those offences;
  - (d) the penalties and, where appropriate, the administrative measures referred to in paragraphs (b) and (c) of this Title include:
    - insofar as natural persons are concerned, in serious cases at least, custodial penalties which may involve extradition,
    - confiscation, where appropriate, of the instruments and proceeds of those offences,

- where appropriate and as provided by the administrative or criminal law of the Member State, the temporary or permanent closure of establishments which have been used or intended for committing such offences;
  - (e) the offences covered by this Joint Action will, where appropriate, fall within the scope of application of the Council of Europe 1990 Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime;
  - (f) its authorities are competent regarding the offences set out in Title I B (c) and (d), at least in cases where:
    - (i) the offence is committed, wholly or partly, on its territory,
    - (ii) with the exception of the offence of possession of pornographic material referred to in Title I A (ii) (c), the person committing the offence is a national or a habitual resident of that Member State.
- B. Where it would be otherwise contrary to the established principles of its criminal law relating to jurisdiction, a Member State may in either adopting or exercising the competence referred to in point A (f) (ii), provide that the offence must also be punishable under the law of the State where it was committed.
- C. Where a Member State maintains the requirement of double criminality provided for in point B, it shall keep its law under review, with a view to ensuring that this requirement is not an obstacle to effective measures against its nationals or habitual residents who are suspected of engaging in such offences in jurisdictions which may not have taken adequate measures as referred to in Article 34 of the Convention on the Rights of the Child of 20 November 1989.
- D. Member States may provide that they will only exercise the jurisdiction provided for in point A (f) (ii) if certain procedural conditions are fulfilled, or where the alleged offender cannot be extradited because of:
- a refusal by the Member States concerned to comply with a request for extradition made by the State where the offence was committed, or
  - a confirmation by that latter State that it does not intend to request the extradition of the alleged offender, or
  - failure by that State to request the extradition of the alleged offender within a reasonable time.
- E. Each Member State shall take the measures necessary to ensure that in addition to ordinary constraining measures such as search and seizure, adequate investigation powers and techniques are available to enable the offences listed in point A (a), (b) and (e) to be investigated and prosecuted effectively, in compliance with the rights of defence and privacy of the persons subject to those measures.
- F. Each Member State shall take the measures necessary to ensure:
- (a) appropriate protection for witnesses who provide information concerning the offences referred to in point A (a), (b) and (e), in accordance with, in particular, the Resolution of the Council of the European Union of 23 November 1995 on the protection of witnesses in the fight against organized crime<sup>(1)</sup>;
  - (b) appropriate assistance for victims and their families.
- For this purpose, each Member State shall ensure that:
- (i) victims are available where required by the Member State's criminal justice system to give evidence in any criminal action, which may entail provisional residence status in appropriate cases; and
  - (ii) victims are enabled to return to their country of origin, or another country which is prepared to accept them, with the full rights and protections accorded by the national law of the Member States.
- In addition, each Member State shall ensure that victims of the offences referred to in Title I B are given appropriate assistance to enable them to defend their interests before the Courts.
- Each Member State shall examine how to keep families of children who are victims of offences covered by this Joint Action informed of the progress of the enquiry.
- G. Each Member State shall take the necessary measures to ensure that the services which are likely to have relevant experience in the context of the fight against trafficking in human beings and sexual exploitation of children, in particular the immigration, social security and tax authorities, give special attention to the problems connected with trafficking in human beings and sexual exploitation of children and, while respecting the internal law of the Member State,

<sup>(1)</sup> OJ No C 327, 7. 12. 1995, p. 5.

cooperate with the authorities responsible for investigation and punishment of the offences referred to in point A (a), (b) and (e). In cases which merit special attention, these services should in particular:

- advise those authorities on their own initiative, where there are reasonable grounds for considering that one of these offences has been committed,
- provide those authorities with all useful information, either on request or on their own initiative,
- if appropriate, take part in the procedures as experts.

- H. For the purposes of ensuring that the fight against trafficking in human beings and sexual exploitation of children is fully effective, each Member State shall ensure that the activities of the authorities responsible for this fight are properly coordinated, allowing for the possibility of a multi-disciplinary approach. Such coordination could, for instance, involve at national or regional level, depending on the administrative structure and legal system of the Member State concerned, ministerial departments, the police services, the judicial authorities which specialize in the matter, as well as public bodies which have been given special responsibilities in this area.
- I. The authorities of each Member State shall take due account of the contribution to the fight against trafficking in human beings and sexual exploitation of children of any group, foundation or association which, by virtue of its Statute, has the aim of combating such offences.

### TITLE III

#### Cooperation between Member States

- A. Member States shall grant each other the widest possible judicial cooperation in the investigations and judicial processes relating to the offences referred to in Title II, point A (a), (b) and (e).
- B. Each Member State which has made a reservation or declaration with respect to Article 5 of the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959, shall review it in order to verify whether it might pose an obstacle to an effective cooperation with other Member States in relation to offences covered by this Joint Action.
- C. Member States shall, in accordance with the applicable arrangements and conventions in force, ensure that letters rogatory are dealt with as quickly as possible and shall keep the requesting State fully informed of the progress of the procedure.
- D. Member States shall, where appropriate, take the necessary measures, to allow the direct transmission of requests for assistance between locally competent authorities.
- E. Each Member States shall, where such appointments do not already exist, appoint one or several contact authorities which may be contacted in the event of difficulty in complying with urgent letters rogatory.
- F. Member States shall also, in conformity with the respective legal traditions of each Member State and applicable conventions and arrangements, grant each other assistance in the exchange of information which in one of the Member States is administrative in nature or falls under the competence of administrative authorities.
- G. Each Member State shall ensure that information concerning missing minors and persons convicted of offences set out in this Joint Action as well as information which could be useful for investigations and prosecutions of such offences is organized in such a way that it is readily accessible and can be effectively used and exchanged with other Member States.
- H. Without prejudice to its own investigations and procedures, each Member State may, without receiving a prior request, communicate to another Member State any factual information where it considers that disclosure of the said information is likely to help the recipient State to begin or carry out investigations or procedures to prevent or punish the offences referred to in Title II, point A (a), (b) and (e) or is likely to involve a request for judicial cooperation from that Member State.
- I. The exchange and communication of information referred to in paragraphs F, G and H shall be carried out in compliance with the right to privacy and applicable instruments and national law relating to the computerized processing of personal information.
- J. Member States shall inform and alert their diplomatic and consular posts, where applicable, in third countries and make the best use of the possibilities offered by them, in the context of international cooperation against trafficking in human beings and sexual exploitation of children.

## TITLE IV

**Commitment and follow-up**

- A. Each Member State shall bring forward appropriate proposals to implement this Joint Action for consideration by the competent authorities with a view to their adoption.
- B. The Council will assess, on the basis of appropriate information, the fulfilment by Member States of their obligations under this Joint Action, by the end of 1999.
- C. This Joint Action shall be published in the Official Journal.
- D. It shall enter into force on the date of its publication.
- Done at Brussels, 24 February 1997.

*For the Council*  
*The President*  
H. VAN MIERLO

---