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

COUNCIL DECISION

of 15 July 1996

extending the application of Joint Action 96/250/CFSP adopted by the Council on the basis of Article J.3 of the Treaty on the European Union, in relation to the nomination of a Special Envoy for the African Great Lakes Region

(96/441/CFSP)

THE COUNCIL OF THE EUROPEAN UNION,

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

Whereas Joint Action 96/250/CFSP⁽¹⁾ adopted by the Council on the basis of Article J.3 of the Treaty on European Union, in relation to the nomination of a Special Envoy for the African Great Lakes Region, comes to an end on 25 September 1996;

Whereas, on the basis of the results attained so far, it is deemed necessary to extend its application until 31 July 1997,

HAS DECIDED AS FOLLOWS:

Article 1

The application of Joint Action 96/250/CFSP is hereby extended to 31 July 1997. The Joint Action shall be reviewed six months after the date on which this Decision is adopted.

Article 2

Additional financial support for the activities of the Special Envoy, commensurate with future needs, shall be the subject of a Council Decision, based on the first indent of Article J.11(2) of the Treaty.

Article 3

This Decision shall enter into force on the date of its adoption. It shall be published in the Official Journal.

Done at Brussels, 15 July 1996.

For the Council
The President
D. SPRING

⁽¹⁾ OJ No L 87, 4. 4. 1996, p. 1.

JOINT ACTION

af 15 July 1996

adopted by the Council on the basis of Article J.3 of the Treaty on European Union, on the nomination of a Special Envoy of the European Union in the city of Mostar

(96/442/CFSP)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Articles J.3 and J.11 thereof,

Having regard to the general guidelines given by the European Council meeting in Corfu on 24 and 25 June 1994,

Whereas the European Council meeting in Florence on 21 and 22 June 1996 has underlined the importance it attached to the electoral process in Mostar and to the need for genuine commitment of the newly elected leadership to the reunification of the town;

Whereas, with the satisfactory holding of the local elections on 30 June 1996 in Mostar, the necessary basis for the establishment of a single, multi-ethnic and lasting administration as set out in Decision 94/790/CFSP⁽¹⁾ is now in place; whereas the European Union Administration of Mostar (EUAM) is to end on 22 July 1996, as provided for in Article 4(1) of the Memorandum of Understanding signed in Geneva on 5 July 1994;

Whereas, in order to consolidate the achievements of the EUAM and prepare the phasing out of its activities, and in order to ensure the rapid integration of Mostar into the overall structure for peace implementation in Bosnia and Herzegovina, a European Union presence in the town remains necessary under a different form; whereas on 18 February the local parties formulated a request to that effect; whereas such a presence may be ensured through the appointment of a European Union Special Envoy;

Whereas, during the transfer of responsibilities from the European Union Administrator to the local authorities of Mostar, transitional measures may be necessary in order to facilitate full establishment of the newly elected unified local administration.

HAS ADOPTED THIS JOINT ACTION:

*Article 1***Scope**

1. The European Union notes that, according to Article 4(1) of the Memorandum of Understanding, the EUAM ends on 22 July 1996.

⁽¹⁾ OJ No L 326, 17. 12. 1994, p. 2. Decision as last amended by Decision 95/552/CFSP (OJ No L 313, 27. 12. 1995, p. 1).

2. In order to ensure the gradual transfer of the responsibilities exercised by the European Union representatives to the newly elected unified local administration, and, consequently, to ensure the objective of the phasing out of the EUAM over a period ending as soon as possible after 23 July 1996, and, in any case, not later than 31 December 1998, the European Union hereby appoints Sir Martin Garrod as its Special Envoy in Mostar. In addition, the action of the Special Envoy shall have as its objective to ensure the rapid integration of Mostar into the overall structures for peace implementation in Bosnia and Herzegovina.

3. The European Union notes that the provisions of the Memorandum of Understanding remain in force and apply, *mutatis mutandis*, to the new form of the European Union presence in the town, with the exception of the provisions that are directly linked to the task of the EUAM.

*Article 2***Mandate of the Special Envoy**

Acting under the authority of the Presidency and in association with the Commission, and with a view to consolidation of the results achieved so far under the Memorandum of Understanding, as well as in accordance with the Rome Agreement of 18 February 1996, the Special Envoy shall have the task of promoting:

- the stabilization and strengthening of the newly elected unified administration of the town of Mostar,
- freedom of movement,
- the return to their homes in Mostar of refugees and displaced persons,
- the completion of the reconstruction projects still under way,
- the protection of human rights,
- the consolidation of a unified and effective law enforcement system,
- the implementation of the arrangements envisaged under Article 5.

*Article 3***Length of the mandate and reporting obligations**

The Special Envoy:

- is appointed for a period ending as soon as possible after 23 July 1996, and, in any case, not later than 31 December 1996,
- shall establish, in conjunction with the elected unified local authorities, a timetable for the implementation of the objectives set out in Article 1 (2),
- shall report regularly, or whenever necessary, to the Council or its designated bodies,
- may be called to report orally on developments, whenever the need arises, and
- may make recommendations to the Council on measures which the European Union might undertake in order to fulfil the objectives set out in Article 1 (2) and Article 2.

*Article 4***Offices of the Special Envoy and the Ombudsman**

1. The Special Envoy shall be supported by a reduced number of staff consistent with the objectives and tasks set out in Article 1 (2) and Article 2 respectively. The services of such staff shall be offered on the same basis as during the period of the EUAM.

2. In view of the changing nature of the European Union presence in Mostar, the Ombudsman shall continue his operations in order to deal with cases pending on 22 July 1996, subject to the provisions of Article 9.

*Article 5***Financial provisions**

1. All assets and liabilities of the EUAM shall be transferred to the Special Envoy's Office upon expiry of the EUAM and shall be managed in order to serve the objectives set out in Article 1 (2) and in Article 2. After securing the uninterrupted financing of the operations of the EUAM that are to be continued by the Special Envoy's Office, the Special Envoy shall take clear decisions on the disposal of the remaining assets by the date set out in Article 1 (2), on the basis of clear procedures.

2. In order to cover the additional costs related to the mandate of the Special Envoy, a sum of ECU 3 million shall be charged to the general budget of the European Communities for 1996.

3. The financial arrangements provided for under Decision 94/790/CFSP shall apply, *mutatis mutandis*, to the operations carried out by the Special Envoy's Office.

*Article 6***Financing of a Western European Union contingent**

The tasks of the Western European Union police element as set out in Article 13 of the Memorandum of Understanding having been completed, the European Union, on the basis of the conditions agreed for the period of the EUAM, and subject to practical arrangements with the local parties, is prepared, if necessary, to finance a continuing presence in Mostar of a limited Western European Union contingent tending towards advice and training. Such financing shall be granted from the budget of the European Union Special Envoy and shall be limited to the period referred to in Article 1 (2).

*Article 7***Termination**

The Special Envoy shall bring to the attention of the local parties that the Council reserves the right to terminate at any time his mandate as well as the European Union presence in Mostar if it considers that the local parties are not fulfilling the obligations arising from the Memorandum of Understanding or are not showing genuine commitment to the reunification of the town and to cooperation with the Special Envoy.

*Article 8***Archives and registry**

On completion or termination of the mandate of the Special Envoy, the registry and archives of the EUAM and of the Special Envoy shall be deposited at the General Secretariat of the Council of the European Union.

*Article 9***Transitional provisions**

1. The Special Envoy shall be empowered to exercise, as a facilitating measure, those powers previously exercised by the European Union Administrator, as long as he is invited to do so by the local parties.

2. Decisions taken by the Special Envoy during the period referred to in paragraph 1 shall be subject to review by the Ombudsman, as provided for in Article 7a of the Memorandum of Understanding for the decisions of the European Union Administrator.

*Article 10***Final provisions**

1. This Joint Action shall enter into force on the date of its adoption.
2. It shall expire on 31 December 1996, unless the Council decides otherwise in accordance with paragraph 4.
3. It shall take effect on 23 July 1996, provided that the Presidency and the Special Envoy have previously informed the Council that they are satisfied that the local parties are committed to the objectives set out in Article 1 (2) and in Article 2 and have no objection to the Special Envoy's function, nor to the continuing implementation, *mutatis mutandis*, of certain provisions of the Memorandum of Understanding, as specified in Article 1 (3).
4. On the basis of a report by the Special Envoy, the Council shall review the implementation of this Joint

Action by 30 September 1996 with a view to deciding whether, in the light of the pace at which the phasing out of the EUAM is proceeding, this Joint Action should be brought to an end before the date provided for in paragraph 2.

*Article 11***Publication**

This Joint Action shall be published in the Official Journal.

Done at Brussels, 15 July 1996.

For the Council

The President

D. SPRING

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

JOINT ACTION

of 15 July 1996

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

(96/443/JHA)

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, in Cannes on 26 and 27 June 1995 and in Madrid on 15 and 16 December 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, racism and xenophobia 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 from 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 ADOPTED THIS JOINT ACTION:

TITLE I

- A. In the interests of combating racism and xenophobia, each Member State shall undertake, in accordance with the procedure laid down in Title II, 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 and xenophobia;
- (e) participation in the activities of groups, organizations or associations, which involve discrimination, violence, or racial, ethnic or religious hatred.
- B. In the case of investigations into, and/or proceedings against, offences based on the types of behaviour listed in paragraph A, each Member State shall, in accordance with Title II, improve judicial cooperation in the following areas and take appropriate measures for:
- (a) seizure and confiscation of tracts, pictures or other material containing expressions of racism and 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) providing information to another Member State to enable that Member State to initiate, in accordance with its law, legal proceedings or proceedings for confiscation in cases where it appears that tracts, pictures or other material containing expressions of racism and 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 any obligations which Member States may have under the international instruments listed below. Member States shall implement this Joint
- Action consistently with such obligations and will refer to the definitions and principles contained in such instruments when so doing:
- the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950,
 - 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 23 November 1995 on the protection of witnesses in the fight against international organized crime⁽¹⁾, 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

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.

The Council will assess the fulfilment by Member States of their obligations under this Joint Action, taking into account the declarations annexed to it, by the end of June 1998.

This Joint Action and the annexed declarations, which are approved by the Council and are without prejudice to the application of this Joint Action by Member States other than those whom these declarations concern, will be published in the Official Journal.

Done at Brussels, 15 July 1996.

For the Council
The President
 D. SPRING

⁽¹⁾ OJ No C 327, 7. 12. 1995, p. 5.

ANNEX

DECLARATIONS REFERRED TO IN TITLE II

1. Declaration 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. Declaration by the French delegation re Title I.C, fifth 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.'

3. Declaration by the United Kingdom delegation re Title I:

'The United Kingdom delegation declares that for the purposes of the application of the Joint Action by the United Kingdom, and taking into account the provisions and general principles of United Kingdom criminal law, the United Kingdom will apply Title I, paragraph A, points (a) to (e) and references thereto where the relevant behaviour is threatening, abusive or insulting and is carried out with the intention of stirring up racial hatred or is likely to do so.

This would include, in accordance with Title I.B and Title II, enabling the relevant United Kingdom authorities in this context to search for and seize tracts, pictures or other material in the UK which is intended for dissemination in another Member State and which is likely to incite racial hatred there.

If problems arise from the application of this declaration, the UK will consult with the Member State concerned with a view to overcoming the problems raised.'

4. Declaration by the Danish delegation re Title I:

'The Danish delegation declares that for the purposes of the application of the Joint Action by Denmark, and taking into account the provisions and general principles of Danish criminal law, Denmark will apply Title I, paragraph A, points (a) to (e) and references thereto only where the relevant behaviour is threatening, insulting or degrading.'
