Judicial cooperation: investigation and prosecution for war crimes or crimes against humanity. Initiative Denmark

2002/0819(CNS) - 03/09/2002 - Legislative proposal

PURPOSE : to present the Danish initiative which aims to adopt a Council Decision on the investigation and prosecution of inter alia war crimes and crimes against humanity. CONTENT : in accordance with the ratification of the Rome Statute of the International Criminal Court of 17 July 1998, this draft decision intends to strengthen cooperation on the collection and exchange of information on the persons responsible for these crimes. This draft decision is based on the Treaty on European Union, and in particular Articles 30, 31 and 34 (2)(c). The Rome Statute which has been signed by all Member States of the European Union affirms that the most serious crimes of concern to the international community as a whole, in particular genocide, crimes against humanity and war crimes, must not go unpunished and that their effective prosecution must be ensured by taking measures at national level and by enhancing international cooperation. In this context, the main aim is to strengthen the possibilities afforded to Member States for investigating and prosecuting persons who have committed or participated in the commission of war crimes or similar serious offences, including terrorism. The purpose of the draft Council Decision is to strengthen the ability of the authorities in the Member States to investigate and prosecute individuals who have participated in or furthered the committing of genocide, crimes against humanity, war crimes and other similar grave crimes against the international community. This objective should be promoted by ensuring the necessary cooperation and exchange of information both nationally between the authorities dealing with immigration and law enforcement and between the authorities in different Member States. Member States shall take the necessary measures to ensure that the relevant national law enforcement and immigration authorities are able to exchange the information which they require in order to carry out their tasks under this provision effectively. The draft decision stipulates that insofar as a person who has applied for a residence permit is suspected of planning, committing or participating in the commission of war crimes or similar serious crimes, the Member States must ensure, in accordance with national law, that the relevant acts are investigated, and, where justified, prosecuted. Member States shall assist one another in investigating and prosecuting such cases in accordance with relevant international agreements and national law. Where, in connection with the processing of an application for a residence permit, the immigration authorities become aware of facts which give rise to a suspicion that the applicant has participated in the acts mentioned above, and where it emerges that the applicant has previously sought permission to reside in another Member State, the law enforcement authorities may apply to the competent law enforcement authorities in the latter Member State with a view to obtaining relevant information, including information from the immigration authorities. The exchange of information pursuant to this provision shall take place in Member States shall take the necessary measures to ensure that the law enforcement and immigration authorities have the appropriate resources and structures to guarantee the proper and effectiveinvestigation and prosecution of the offences. In that connection, Member States shall consider the need to set up or designate specialist units with particular responsibility for investigating and prosecuting the offences in question. Furthermore, Member States shall coordinate ongoing efforts. Member States shall exploit as fully as possible cooperation within the European Judicial Network in accordance with Joint Action 98/428/JHA of 28 June 1998. The Member States shall appoint national coordinators for the investigation of war crimes. At the Presidency's initiative, the national coordinators shall meet at regular intervals in conjunction with meetings within the European Judicial Network with a view to exchanging information about experiences, practices and methods. Depending on the circumstances, representatives from the International Criminal Tribunals for the former Yugoslavia and for Rwanda and the International Criminal Court shall also be invited to take part in such meetings. It should be noted that this present draft Council decision should be seen as a continuation of work along the line set out by Decision 2002/494/JHA on the creation of a European

Network of Contact Points in respect of persons responsible for genocide, crimes against humanity and war crimes.