

Brussels, 18 February 2005

**6047/2/05
REV 2**

LIMITE

**JAI 43
CATS 10**

NOTE

From : Presidency

To : Council

No. prev. doc. : 5448/05 COPEN 10 + ADD 1; 6047/1/05 REV 1 JAI 43 CATS 10

Subject : Evaluation reports - orientation debate

Introduction

The Council has recently been seized with the evaluation report drawn up by the European Commission concerning the Framework Decision on Joint Investigative Teams (doc 5448/05 COPEN 10). This report is made pursuant to Article 4 (2) of the Framework Decision which indicates that the Member States shall transmit to the General Secretariat of the Council and the Commission the text of any provisions transposing into their national law the obligations imposed on them by the Framework Decision and that on the basis of this and other information, the Commission shall by 1 July 2004 submit a report on the operation of the Framework Decision. The Council shall assess the extent to which the Member States have complied with the Framework Decision.

The provision of this Framework Decision is in principle of a standard character and can be found with small variations in several other Framework Decisions (see, for instance Framework Decisions on Freezing of assets - Article 14 (2); on Counterfeiting - Article 11 (2); on Victims - Article 18; on Fraud and Counterfeiting - Article 14 (2); on Money Laundering - Article 6 (2); on Terrorism - Article 11 (2); on Trafficking in Human Beings - Article 10 (2)). Certain Framework Decisions contain slightly different wording (see e.g. on the European Arrest Warrant - Article 34). The report of the Commission is expected soon.

The Council has up to now discussed the implementation reports by the Commission in a working party on the basis of the report and a paper drawn up by the Presidency where the habit has been not to "name and shame" Member States. This may be because the Council traditionally does not "name and shame" (see however the practice to examine implementation of terrorist instruments) or because the Commission and the Member State concerned is not in agreement whether the Member State has implemented the Framework Decision correctly. In the context of the discussion, the Council has taken note of the report and has often called for a further report by the Commission.

It should furthermore be noted that the Council itself has set up or is carrying out evaluations which may touch upon the practical implementation of Framework Decisions, such as the Schengen evaluations, the so-called peer-evaluations carried out in the framework of organised crime or terrorism and the collective evaluation mechanism of candidate countries.

According to the Hague Programme (under 3.2), "in order to facilitate full implementation of the principle of mutual recognition, a system providing for objective and impartial evaluation of the implementation of EU policies in the field of justice, while fully respecting the independence of the judiciary and consistent with all the existing European mechanisms, must be established."

Subjects for discussion by the Council

One can in principle distinguish between evaluations of the transposition of legal instruments and evaluation of how member States cooperate with each other in practice. The Presidency wants at this stage to limit the discussion to the first type of evaluation.

In order to begin consideration of the issue of evaluations in Framework Decisions, the Presidency would seek the Council's advice on the following matters which are considered of importance for the development of evaluations in the future, and consequently also for working towards an effective system of implementation of decisions in the JLS area. The advice of Ministers may then inform further discussions and initiatives in this area.

Are delegations content with the standard condition referred to above, which hitherto has lead the Council simply to take note of Commission reports or should the Union already now work towards a more stringent system of evaluations where implementation reports of the Council are being discussed by the Council itself?

If the Council were to discuss implementation, this may take too much time of its agenda. But in such a case, how could the Council ensure that reports are seriously discussed and that the quality of implementation is ensured; after all, the bad implementation of one measure adopted by the Council leads often to a lower level of Freedom, Security and Justice in the Area which we want to build together?

The Presidency gives hereafter some questions that could be discussed in this context.

- Could a system whereby the Commission carries out evaluation and monitoring be set up (see the proposed Article 15.2 of the Framework Decision on procedural rights, doc 9318/04 COPEN 61)?
- Should Commission reports only be discussed at the level of the Article 36 Committee?

- Should the Commission be asked to improve its Scoreboard and make a more detailed evaluation within its framework?
- Should the Commission be asked to make an evaluation of how each Member State has implemented a number of Framework Decisions and report to the Council on how each Member State individually has fulfilled its task of implementing Council decisions?
- Should the Commission report both on delays in implementation as well as on quality aspects?
- Should some form of adversarial system be set up which would let the Member State that has been criticised respond?
- Can the implementation and application of framework decisions be improved if Member States immediately after the entry into force of their implementation legislation, or, where appropriate, before the adoption thereof, exchange relevant information?

The Council is invited to give its political guidelines on how best to achieve an efficient follow-up to work on transposition of legal instruments in the Member States.