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From:	Presidency
To:	Working Party on General Matters and Evaluations
No. prev. doc.:	11748/15 and 13082/1/15 REV 1
Subject:	Presidency's initiative for the improvement of the follow-up to the evaluation mechanism foreseen in Joint Action 97/827/JHA

1. INTRODUCTION

1. Recommendation N° 15 of the High Level Group on Organised Crime, set up under the Irish Presidency in December 1996 and whose Report was adopted by the European Council meeting at Amsterdam in June 1997, provided that "*a mechanism should be established, based on the experience with the model developed in the FATF (Financial Action Task Force), to mutually evaluate the application and implementation at national level of the European Union and other international instruments and undertakings in criminal matters as well as ensuing national law, policies and practices*".
2. The Recommendation also noted that the evaluation should be based on certain principles: "*parity of the Member States, mutual trust, pre-established scope and criteria for the evaluation ... and check-lists and an assurance that experts from all Member States will participate, at some stages, in the evaluation process*".

3. Following the above Recommendation, Joint Action 97/827/JHA of 5 December 1997¹, establishing a mechanism for evaluating the application and implementation at national level of international undertakings in the fight against organised crime, was adopted. Six evaluation rounds have already been carried out and the 7th evaluation round, focusing on cybercrime, is on-going.
4. In this respect, it has to be underlined that the objective of the evaluation procedure established by Joint Action 97/827/JHA of 5 December 1997 is to contribute to further enhancing international judicial cooperation, including by improving the use of relevant Union instruments, at national level, with a view to enhancing the fight against organised crime.
5. It has also to be recalled that the evaluation rounds do not end with the presentation and the adoption of the evaluation reports, but that a follow up mechanism, wherein the evaluated Member State provides information on the implementation of the recommendations of the report currently within 18 months from the adoption of the report, is also foreseen.
6. In the context of previous discussions in the past at the GENVAL Working Party ², it was noted that a vast majority of delegations and the Commission preferred to maintain the existing follow-up system, and it was consequently decided to leave it as it was, with some minor, mainly procedural, adjustments.
7. Against this background, the Luxembourg Presidency took the initiative to re-launch a reflection on the follow-up mechanism to the evaluation process, with the aim to explore possible ways to ensure a more efficient monitoring of the implementation of the country specific recommendations in the evaluation reports, taking into account the progress made as well as the difficulties encountered by the evaluated Member State, and possible remaining shortcomings.

¹ OJ C 251, 15.8.97, p 11.

² See, *inter alia*, documents 17338/12 GENVAL 94, 6865/1/13 REV 1 GENVAL 9, 7809/1/13 and REV 1 GENVAL 18) and 91541/13.

8. In the light of recent experience of the experts involved in the evaluations of Member States and of relevant Union's institutions, the Presidency's initiative, has built upon the existing evaluation procedure as it stands. While maintaining its “peer pressure approach“, focusing on mutual learning from each others' experiences and best practices, the Presidency's initiative aimed at ensuring that the added value resulting from the evaluations, and from the reports and the recommendations, is as high as possible.
9. At the GENVAL meetings of 15 September and 29 October 2015, an exchange of views on this topic took place and delegations were invited to provide written answers to the questionnaire set out in the Annex to doc. 11748/15.

2. **SUMMARY AND ANALYSIS OF THE REPLIES TO THE QUESTIONNAIRE**

10. Based on the written contributions received from 25 delegations, as set out in the compilation in doc. 13082/1/15 REV 1, the Presidency has summarized and analysed the outcome of the above mentioned questionnaire as set out below:

A) **Member States' reporting about the implementation of relevant country specific recommendations in the evaluation reports**

1) Timeframe

11. A strong majority of delegations consider the current timeframe of 18 months for Member States to report about the implementation of relevant country specific recommendations in the evaluation reports to be appropriate. Two delegations suggest that this deadline could exceptionally be extended if legislative changes at national level needed to implement the recommendations would require more time.

2) Calendar

12. Most delegations support the idea that the GSC would maintain a table indicating the timeline (18 months from the adoption of the report) for each Member State to conduct a follow-up on the recommendations given in the evaluation report and/or send out an individual reminder to the Member State concerned.

3) Reporting to and discussion at Genval and/or at higher level Council bodies

13. The majority of delegations generally support the idea of a reporting by the evaluated Member State to the GENVAL Working Party in written form about how country specific recommendations have been followed-up; several delegations are, however, not in favour of introducing a standard format for the purpose of such reporting, in order to allow sufficient flexibility to take into account the specificity of the situation in each Member State.
14. The majority of delegations find it also useful to have a discussion at the GENVAL Working Party, based on the follow-up report presented by the evaluated Member State, to allow for comments and questions by delegations. The majority also supports setting a deadline for the submission of such written report within the above timeframe - i.e. of 1 months before the relevant GENVAL meeting - and distributed to delegations sufficiently in advance of that meeting. Members of the evaluation team might, where appropriate, be invited to contribute to the follow-up, subject to their availability to do so.
15. The majority of delegations also support the preparation of a final follow-up report regarding all evaluated Member States in the relevant evaluation round, in one single document, to be discussed and adopted by the GENVAL Working Party. However, delegations' views vary in relation to the involvement of higher level Council bodies, some of them have not indicated precisely at which Council instances in addition to GENVAL this might take place, a majority, however, being in favour of such presentation to be made at COSI and/or CATS, and only a few delegations support to do so at Council's level.

B) Other suggestions regarding the general improvement of the mutual evaluation process

16. Other comments and suggestions regarding different aspects of the mutual evaluation process, in addition to those related to the follow-up mechanism within the scope of the questionnaire, were made by some delegations, namely:

- providing the evaluation team experts with appropriate training before the on-spot visits in the evaluated Member State (NL);
- more in depth discussion at GENVAL of the evaluation reports with the possibility for delegations to propose amendments to such reports before adoption (DE);
- avoid overcharging GENVAL with additional work on mutual evaluation reports, thus leaving sufficient room for the other issues within the competence of this Working party (FR)
;
- avoid creating additional bureaucracy (UK);
- also invite EU institutions and bodies to report on implementation of conclusions and recommendations addressed to them (EE);
- speeding-up the translation time in the official language of the evaluated Member State (SK);
- ensuring consistency in evaluation teams criteria and methods (SK).

3. CONCLUSIONS AND RECOMMENDATIONS

17. In the light of the above, the outcome of the questionnaire outlined that certain adjustments to the current follow-up mechanism are generally supported by delegations, provided that the “peer pressure approach” would be maintained, and that this would not entail any additional administrative burdens to the mutual evaluation process.
18. Against this background, the Luxembourgish Presidency presents the following conclusions and recommendations, identifying concrete steps with a view to improving the current follow-up mechanism to the mutual evaluations:
- *the current timeframe of 18 months for Member States to conduct a follow-up after the adoption of the evaluation reports is maintained;*
 - *the GSC will maintain a table indicating the timeline for such follow-up by each Member State and, where appropriate, send out an individual reminder to the Member State concerned;*
 - *the evaluated Member State will provide its follow-up report in written form within the 18 months timeframe, and at the latest 1 month before the relevant GENVAL meeting;*
 - *on this basis, an oral discussion on the follow-up to the evaluation report will take place at the GENVAL Working Party, based on the above written report;*
 - *a final follow-up report in the relevant evaluation round, in one single comprehensive document, will be prepared by the GSC for discussion and adoption by GENVAL and presentation to CATS and COSI.*
19. In the light of the above, the Presidency invites delegations to reflect on the above conclusions and recommendations with a view to their submission to and approval by the GENVAL Working Party at one of its next meetings. Other possible adjustments to the mutual evaluation process, including the general suggestions referred to in Section 2 B), might be considered at a later stage.