



**COUNCIL OF
THE EUROPEAN UNION**

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COVER NOTE

From : Javier Conde, Permanent Representative of the Kingdom of Spain
Date of receipt : 24 April 2002
to : Javier Solana, Secretary-General of the Council of the European Union
Subject: Draft Decision establishing a mechanism for evaluating the legal systems and their implementation at national level in the fight against terrorism

Dear Sir,

Under Article 29 and Article 34(1) of the Treaty on European Union, please find enclosed an initiative from the Kingdom of Spain for a Decision establishing a mechanism for evaluating the legal systems and their implementation at national level in the fight against terrorism

The aim of this initiative is to increase cooperation and mutual assistance in preventing and combating terrorist acts through police and judicial cooperation.

We should be very grateful if, in accordance with Article 17 of the Council's Rules of Procedure, this initiative were submitted to Coreper as an item in part I of its agenda, for publication in the Official Journal and forwarding to the European Parliament for its Opinion.

(Complimentary close).

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 29 and Article 34(1) thereof,

Having regard to the initiative of the Kingdom of Spain ¹,

Having regard to the Opinion of the European Parliament ²,

Whereas:

1. The Justice and Home Affairs Council meeting on 20 September 2001 decided, as recorded in point 15 of its Conclusions, to instruct the Article 36 Committee to work out an easier and swifter form of the evaluation mechanism defined in the Joint Action of 5 December 1997 establishing a mechanism for evaluating the application and implementation at national level of international undertakings in the fight against organised crime, in order to define a procedure for the peer assessment of national anti-terrorist arrangements.
2. The Joint Action of 5 December 1997 adopted by the Council on the basis of Article K.3 of the Treaty on European Union established a mechanism for evaluating the application and implementation at national level of international undertakings in the fight against organised crime (97/827/JHA).
3. It is necessary to improve the national legal systems in the fight against terrorism and their implementation.
4. The primary responsibility for designing each legal system and implementing it at national level rests with each Member State, although, in the context of the European Union, Member States inform each other of the content in order to achieve greater efficiency in the fight against terrorism.
5. It is also desirable to establish a mechanism which, in the context of the cooperation provided for in the TEU, enables Member States to evaluate the national legal systems in the fight against terrorism and their implementation on a basis of equality and mutual confidence.

¹ OJ

² OJ

HAS DECIDED AS FOLLOWS:

Article 1

Creation of the evaluation mechanism

1. Without prejudice to the competence of the Community, a mechanism for peer evaluation of the national legal systems in the fight against terrorism and their implementation, and in particular of actions against terrorism within the framework of international cooperation between Member States, shall be established in accordance with the detailed rules set out below.
2. Each Member State shall undertake to ensure that its national authorities cooperate fully with the evaluation teams set up under this Decision with a view to its implementation, with due regard for the rules of law and ethics applicable at national level.

Article 2

Evaluation subjects

1. Each year, the specific subject of the evaluation as well as the order in which Member States are to be evaluated, shall be defined by the Article 36 Committee, on a proposal from the Presidency.

Depending on the specific subject chosen for the evaluation, the Article 36 Committee shall also decide whether to designate Council Working Parties to carry out the evaluation or to carry it out itself.

2. The Presidency of the Council shall prepare the evaluation assisted by the General Secretariat of the Council which shall use in particular the national experts seconded to it for that purpose. The Commission shall be fully involved in the preparatory work.
3. The first evaluation exercise shall finish no later than the end of 2002.

Article 3

Designation of experts

1. Each Member State shall send the General Secretariat of the Council, at the Presidency's initiative, and no later than 15 days after the date on which the Article 36 Committee decides to start an evaluation on a specific subject, the names of one to three experts having substantial experience of the subject to which the evaluation relates in the field of combating terrorism and who are prepared to participate in at least one evaluation exercise.
2. The Presidency shall draw up a list of the experts designated by the Member States and shall forward it to the Article 36 Committee or to the Working Party designated for the purpose.

Article 4

Evaluation team

On the basis of the list referred to in Article 3(2), the Presidency shall choose a team of two experts for the evaluation of each Member State, ensuring that they are not nationals of the Member State in question.

The names of the experts chosen to make up each evaluation team shall be notified to the Article 36 Committee or to the Working Party designated for the purpose.

The evaluation team shall be assisted in all its tasks by the General Secretariat of the Council.

Article 5

Preparation of the questionnaire

The Presidency shall, with the assistance of the General Secretariat of the Council, draw up a questionnaire for the purposes of evaluating all Member States in the framework of the specific subject defined in Article 2(1) and shall submit it for approval to the Article 36 Committee or to the Working Party designated for the purpose. The questionnaire shall be designed to establish all information useful for the conduct of the evaluation. The Member State being evaluated shall ensure that it replies to the questionnaire within one month and as fully as possible and attaches where necessary all legal provisions and technical and practical data required.

Article 6

Evaluation visit

No later than one month after receiving the reply to the questionnaire, the evaluation team shall go to that Member State with a programme of visits arranged by the Member State visited on the basis of the evaluation team's proposal, for interviews with the political, administrative, police, customs and judicial authorities and any other relevant body.

Article 7

Preparation of the draft report

No later than fifteen days after the visit referred to in Article 6, the evaluation team shall draw up a draft report and submit it to the Member State evaluated which shall give its opinion within 15 days. If the evaluation team deems it appropriate, it shall amend its report in the light of the comments made by the Member State evaluated.

Article 8

Discussion and adoption of the report

1. The Presidency shall forward the draft report, which shall be confidential, to the members of the Article 36 Committee or to the Working Party designated for the purpose, together with any of the comments by the Member State evaluated which were not accepted by the evaluation team.
2. The meeting of the Article 36 Committee or the Working Party designated for the purpose shall begin with a presentation of the draft report by the members of the evaluation team. The representative of the Member State evaluated shall then provide any comment, information or explanation he deems necessary. The Article 36 Committee or the Working Party designated for the purpose shall then discuss the draft report and adopt its conclusions by consensus.
3. The Presidency shall inform the Council once a year of the results of the evaluation exercises. The Council may, where it sees fit, address any recommendations to the Member State concerned and may invite it to report back to the Council on the progress it has made by a deadline to be set by the Council.
4. In compliance with Article 9(2), the Presidency shall inform the European Parliament each year of the implementation of the evaluation mechanism.
5. At the end of a complete evaluation exercise, the Council shall take the appropriate measures.

Article 9

Confidentiality

1. The experts on the evaluation teams shall be required to respect the confidentiality of any information they receive in connection with their task. Member States must therefore ensure that the experts they appoint under Article 3 have an appropriate security level, where appropriate.
2. The report drawn up within the framework of this Decision shall be confidential. However, the Member State evaluated may publish the report on its own responsibility. It must obtain the Council's consent if it wishes to publish only parts of it.

Article 10

Review of the mechanism

No later than at the end of the first evaluation of all the Member States, the Council shall examine the detailed rules and scope of the mechanism and shall, if appropriate, make adjustments to this Decision.

Article 11

Entry into force

This Decision shall enter into force on the day of its publication in the Official Journal.

Article 12

Publication in the Official Journal

This Decision shall be published in the Official Journal.

Done at Brussels, on 2002.

For the Council

The President

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