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## **REPORT**

1. on the initiative by the Kingdom of Spain with a view to adopting a Council Decision on the implementation of specific measures for police and judicial cooperation to combat terrorism in accordance with Article 4 of Common Position 2001/931/CFSP

(7756/4/2002 – C5-0319/2002 – 2002/0808(CNS))

2. on the initiative by the Kingdom of Spain with a view to adopting a Council Decision establishing a mechanism for evaluating the legal systems and their implementation at national level in the fight against terrorism

(8811/2/2002 – C5-0281/2002 – 2002/0809(CNS))

Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

Rapporteur: Gerardo Galeote Quecedo

### ***Symbols for procedures***

- \* Consultation procedure  
*majority of the votes cast*
- \*\*I Cooperation procedure (first reading)  
*majority of the votes cast*
- \*\*II Cooperation procedure (second reading)  
*majority of the votes cast, to approve the common position  
majority of Parliament's component Members, to reject or amend  
the common position*
- \*\*\* Assent procedure  
*majority of Parliament's component Members except in cases  
covered by Articles 105, 107, 161 and 300 of the EC Treaty and  
Article 7 of the EU Treaty*
- \*\*\*I Codecision procedure (first reading)  
*majority of the votes cast*
- \*\*\*II Codecision procedure (second reading)  
*majority of the votes cast, to approve the common position  
majority of Parliament's component Members, to reject or amend  
the common position*
- \*\*\*III Codecision procedure (third reading)  
*majority of the votes cast, to approve the joint text*

(The type of procedure depends on the legal basis proposed by the Commission)

### ***Amendments to a legislative text***

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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## PROCEDURAL PAGE

1. By letter of 23 May 2002 the Council consulted Parliament, pursuant to Article 39(1) of the EU Treaty, on the initiative by the Kingdom of Spain with a view to adopting a Council Decision on the implementation of specific measures for police and judicial cooperation to combat terrorism in accordance with Article 4 of Common Position 2001/931/CFSP (7756/2002 – 2002/0808(CNS)).

At the sitting of 29 May 2002 the President of Parliament announced that he had referred the initiative to the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs as the committee responsible (C5-0219/2002).

By letter of 18 July 2002 the Council consulted Parliament, pursuant to Article 39(1) of the EU Treaty, on an amended initiative with a view to adopting a Council Decision on the implementation of specific measures for police and judicial cooperation to combat terrorism in accordance with Article 4 of Common Position 2001/931/CFSP (7756/4/2002 – 2002/0808(CNS)).

At the sitting of 4 July 2002 the President of Parliament announced that he had referred the initiative to the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs as the committee responsible (C5-0319/2002).

2. By letter of 18 June 2002 the Council consulted Parliament pursuant to Article 39(1) of the EU Treaty, on the initiative by the Kingdom of Spain with a view to adopting a Council Decision establishing a mechanism for evaluating the legal systems and their implementation at national level in the fight against terrorism (8811/2/2002 – 2002/0809(CNS)).

At the sitting 1st July 2002 the President of Parliament announced that he had referred the initiative to the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs as the committee responsible (C5-0281/2002).

The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs appointed Gerardo Galeote Quecedo rapporteur at its meeting of 9 July 2002.

The committee considered the initiatives by the Kingdom of Spain and the draft report at its meetings of 2 July 2002, 2 September 2002 and 12 September 2002.

Pursuant to Rule 61(3) the committee invited the Commission to state its position on the initiatives. The Commission stated its position in writing by letter dated 23 July 2002.

At the meeting of 2 September 2002, it adopted:

1. the draft legislative resolution on the initiative by the Kingdom of Spain with a view to adopting a Council Decision on the implementation of specific measures for police and judicial cooperation to combat terrorism in accordance with Article 4 of Common Position 2001/931/CFSP (2002/0808(CNS)) by 22 votes to 1, with 0 abstentions;

The following were present for the vote: Jorge Salvador Hernández Mollar, chairman ;Robert J.E. Evans, vice-chairman; Gerardo Galeote Quecedo (for Mary Elizabeth Banotti),

rapporteur; Roberta Angelilli, Christian Ulrik von Boetticher, Hans Udo Bullmann (for Martin Schulz, pursuant to Rule 153(2)), Carlos Coelho, Thierry Cornillet, Gérard M.J. Deprez, Evelyne Gebhardt (for Ozan Ceyhun), Adeline Hazan, Margot Keßler, Eva Klamt, Baroness Sarah Ludford, Bill Newton Dunn, Hubert Pirker, Bernd Posselt, Martine Roure, Patsy Sørensen, Joke Swiebel, Anna Terrón i Cusí, Maurizio Turco and Walter Veltroni.

At the meeting of 12 September 2002, it adopted:

2. the initiative by the Kingdom of Spain with a view to adopting a Council Decision establishing a mechanism for evaluating the legal systems and their implementation at national level in the fight against terrorism (2002/0809(CNS)) by 20 votes to 8, with 1 abstention;

The following were present for the vote: Jorge Salvador Hernández Mollar, chairman; Robert J.E. Evans and Giacomo Santini, vice-chairmen; Gerardo Galeote Quecedo (for Mary Elizabeth Banotti), rapporteur; Roberta Angelilli, Christian Ulrik von Boetticher, Alima Boumediene-Thiery, Marco Cappato (for Mario Borghezio), Michael Cashman, Ozan Ceyhun, Carlos Coelho, Gérard M.J. Deprez, Giuseppe Di Lello Finuoli, Adeline Hazan, Anna Karamanou (for Carmen Cerdeira Morterero), Timothy Kirkhope, Eva Klamt, Ole Krarup, Alain Krivine (for Ilka Schröder), Baroness Sarah Ludford, Bill Newton Dunn, José Ribeiro e Castro, Martine Roure, Patsy Sørensen, Joke Swiebel, Fodé Sylla, Anna Terrón i Cusí, Maurizio Turco, Olga Zrihen Zaari (for Margot Keßler).

The report was tabled on 13 September 2002.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

## DRAFT LEGISLATIVE RESOLUTION

### **1. European Parliament legislative resolution on the initiative by the Kingdom of Spain with a view to adopting a Council Decision on the implementation of specific measures for police and judicial cooperation to combat terrorism in accordance with Article 4 of Common Position 2001/931/CFSP (7756/4/2002 – C5-0319/2002 – 2002/0808(CNS))**

#### **(Consultation procedure)**

*The European Parliament,*

- having regard to the initiative by the Kingdom of Spain and the amended initiative (7756/2002<sup>1</sup> and 7756/4/2002<sup>2</sup>),
  - having regard to Articles 30, 31 and 34(2)(c) of the EU Treaty,
  - having been consulted by the Council pursuant to Article 39(1) of the EU Treaty (C5-0319/2002),
  - having regard to Rules 106, 67 and 61 of its Rules of Procedure,
  - having regard to the report of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs (A5-0305/2002),
1. Approves the initiative by the Kingdom of Spain as amended;
  2. Calls on the Council to alter the text accordingly;
  3. Calls on the Council to notify Parliament should it intend to depart from the text approved by Parliament;
  4. Asks to be consulted again if the Council intends to amend the initiative by the Kingdom of Spain substantially;
  5. Instructs its President to forward its position to the Council and Commission, and the government of the Kingdom of Spain.

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<sup>1</sup> OJ C 126E, p.22 of 28.5.2002.

<sup>2</sup> Not yet published.

Amendment 1  
Recital 8

This Decision respects the fundamental rights and observes the principles recognised by Article 6 of the Treaty on European Union. Nothing in this Decision may be interpreted as allowing to infringe the legal protection afforded under national law to the persons, groups and entities listed in the Annex to the Common Position.

This Decision respects the fundamental rights and observes the principles recognised by Article 6 of the Treaty on European Union, ***the European Convention on Human Rights and Fundamental Freedoms and the European Charter of Fundamental Rights***. Nothing in this Decision may be interpreted as allowing to infringe the legal protection ***and the protection of human rights and fundamental freedoms*** afforded under national, ***European and international*** law to the persons, groups and entities listed in the Annex to the Common Position.

*Justification*

*Reference should be included to international and European human rights standards.*

Amendment 2  
Recital 8a (new)

***All information, documents or evidence transferred to Europol or Eurojust under this Decision, exchanged between Europol and Eurojust under the agreement to be established pursuant to Article 5, or transferred to third parties under the Europol Convention or the Eurojust Decision shall only be used for the purposes of criminal investigations into terrorist offences.***

*Justification*

*The use of the information which has been transferred should be limited to the purposes defined in this decision. This limitation on the use should also apply where the information is transferred to third parties and third countries, e.g. the US, as may be possible for example under the Europol agreements.*

Amendment 3  
Recital 8b (new)

***All data transmitted to Europol or Eurojust, exchanged between Europol and Eurojust under the agreement to be established pursuant to Article 5, or transferred to third parties under the Europol Convention or the Eurojust Decision shall be guaranteed a level of protection for personal data at least equivalent to that resulting from the application of the principles of and those of Directive 95/46/CE.***

*Justification*

*The level of protection for personal data should be stated explicitly in the Decision and should also apply in the event that the data is transferred to third parties and to third countries.*



Amendment 4  
Recital 8c (new)

***The increasing cross-border police cooperation, the European Arrest Warrant and the establishment of joint investigation teams prove the urgent necessity for the Member States to agree on methods of investigation.***

*Justification*

*Self-evident.*

Amendment 5  
Recital 8d (new)

***The improvement of Europol's operational capacities implies the improvement of parliamentary scrutiny and the application of the rules governing the jurisdiction of the Court of Justice (Article 35 of the EU Treaty).***

*Justification*

*Self-evident.*

Amendment 6  
Article 3, paragraph 1

1. Each Member State shall designate a Eurojust national correspondent for terrorism matters under Article 12 of the Eurojust Decision ***or a appropriate judicial or other competent authority or, where its legal system so provides, more than one authority***, and shall - in accordance with national law - ensure that this correspondent ***or appropriate judicial or other competent authority*** has access to and can collect all relevant information concerning and resulting from criminal proceedings conducted under the responsibility of its judicial authorities, with regard to terrorist offences involving any of the listed persons, groups or entities.

1. Each Member State shall designate a Eurojust national correspondent for terrorism matters under Article 12 of the Eurojust Decision and shall - in accordance with national law - ensure that this correspondent has access to and can collect all information concerning and resulting from criminal proceedings conducted under the responsibility of its judicial authorities, with regard to terrorist offences involving any of the listed persons, groups or entities.

*Justification*

*In order to make effective the fight against terrorism, it is important that each Member State has an Eurojust correspondent responsible for this matter.*

Amendment 7  
Article 3, paragraph 2, introductory sentence

Each Member State shall take necessary measures to ensure that at least the following information, collected by the national correspondent ***or by the appropriate judicial or other competent authority***, is communicated to Eurojust, in accordance with national law, and insofar as permitted by, the provisions of the Eurojust Decision, in order to enable it to carry out its tasks:

Each Member State shall take necessary measures to ensure that at least the following information, collected by the national correspondent is communicated to Eurojust, in accordance with national law, and insofar as permitted by, the provisions of the Eurojust Decision, in order to enable it to carry out its tasks:

*Justification*

*See amendment 4.*

Amendment 8  
Article 3a (new)

***The collection, storage and/or exchange of personal data in the framework of this Decision shall respect criteria equivalent to the provisions of Directive 95/46/CE.***

*Justification*

*Self-evident.*

Amendment 9  
Article 4

Member States shall, *where appropriate, take the necessary measures to set up* joint investigation teams *in order to carry out criminal investigations into terrorist offences involving any of the listed persons, groups or entities.*

***1. When Member States' investigations into terrorist offences require difficult and demanding investigations having links with other Member States or when the circumstances of the case necessitate co-ordinated or concerted action in the Member States involved, Member States shall create joint investigation teams in accordance with the Framework Decision of 13 June 2002.***

***2. Member States shall take the necessary measures to ensure that whenever a national official participates in a joint investigation team set up in order to investigate terrorist offences involving any of the listed persons, groups or entities, that national official should provide the team with all information relating to any of the listed persons, groups or entities or to offences that such persons are deemed to have committed or are about to commit, available in that Member State, in accordance with the Framework Decision of 13 June 2002.***

***3. By virtue of this Decision, Member States are presumed have given their consent (unless they make an explicit declaration to the contrary when the joint investigation team is created) that all information lawfully obtained by a member or seconded member of a joint investigation team set up under the Framework Decision of 13 June 2002, may be used for detecting, investigating and prosecuting terrorist offences involving any of the listed persons, groups or entities, pursuant to Article 1(10)(b) of the Framework Decision of 13 June 2002.***

#### *Justification*

*The possibility of creating joint investigation teams should be fully exploited in the fight against terrorism. In this sense, when the conditions established in the Framework Decision 2002/465 are fulfilled (ex. investigations having links with other Member States) their creation should be obligatory in order to effectively achieve the objective. The other aspects recall the possibilities already foreseen in that Framework Decision.*

Amendment 10  
Article 4(4) (new)

***4. The lawfulness of all information obtained by a Member of a joint investigation team is subject to judicial control. Member States shall agree on***

***binding instruments on the methods of investigation both by national and Europol agents.***

*Justification*

*Self-evident.*

Amendment 11  
Article 5

Member States shall ensure that ***all*** relevant data that they communicate to Europol and Eurojust, pursuant to Articles 2 and 3, and that relate to any of the listed persons, groups or entities or to offences that they are deemed to have committed or are about to commit, can be exchanged between Europol and Eurojust insofar as provided by the agreement on cooperation to be signed between these two bodies, in accordance with the Europol Convention and the Eurojust Decision.

Member States shall ensure that relevant data that they communicate to Europol and Eurojust, pursuant to Articles 2 and 3, and that relate to any of the listed persons, groups or entities or to offences that they are deemed to have committed or are about to commit, can be exchanged between Europol and Eurojust insofar as provided by ***international, European and national provisions on the processing and transfer of personal data and in particular the confidentiality of criminal investigations, which should be included in*** the agreement on cooperation to be signed between these two bodies, in accordance with the Europol Convention and the Eurojust Decision. ***The supervisory authority shall be responsible for this matter.***

*Justification*

*Reference should be included to international, European and national provisions on the processing of personal data and the confidentiality of criminal investigations, so as to avoid informal exchanges of information not covered by law and to ensure that the information may subsequently be used as evidence.*

Amendment 12  
Article 7 a (New)

*Article 7 a*

***1. The Council shall carry out an annual evaluation of the application and effectiveness of this Decision.***

***2. The Parliament shall be informed of this evaluation during the annual debate pursuant to Article 39 of the EU Treaty.***

*Justification*

In order to decide whether additional measures should be taken the Council should carry out an annual evaluation and should inform the Parliament of its conclusions.

Amendment 13  
Article 7a, paragraph 3 (new)

***Parliament shall be informed of the content of the list of European and non-European terrorist organisations after each bi-annual or regular update.***

*Justification*

*Self-evident.*

## DRAFT LEGISLATIVE RESOLUTION

### **2. European Parliament legislative resolution on the initiative by the Kingdom of Spain with a view to adopting a Council Decision establishing a mechanism for evaluating the legal systems and their implementation at national level in the fight against terrorism (8811/2/2002 – C5-0281/2002 – 2002/0809(CNS))**

#### **(Consultation procedure)**

*The European Parliament,*

- having regard to the initiative by the Kingdom of Spain and the amended initiative ((8831/2002<sup>1</sup> and 8811/2/2002<sup>2</sup>),
  - having regard to Articles 29, 34(1) and 34(2)(c) of the EU Treaty,
  - having been consulted by the Council pursuant to Article 39(1) of the EU Treaty (C5-0281/2002),
  - having regard to Rules 106, 67 and 61 of its Rules of Procedure,
  - having regard to the report of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs (A5-0305/2002),
1. Approves the initiative by the Kingdom of Spain as amended;
  2. Calls on the Council to alter the text accordingly;
  3. Calls on the Council to notify Parliament should it intend to depart from the text approved by Parliament;
  4. Asks to be consulted again if the Council intends to amend the Draft Council Decision substantially;
  5. Instructs its President to forward its position to the Council and Commission, and the government of the Kingdom of Spain.

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<sup>1</sup> Not yet published.

<sup>2</sup> Not yet published.

## Amendment 14

## Recital 1

*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.*

*1. The European Council meeting on 21 September 2001 adopted an action plan for fighting terrorism<sup>1</sup> and since that date this action plan is regularly updated by a road-map<sup>2</sup> of all the measures needed at European and national level; moreover, point 34 of the road map outlines the need for peer evaluation of national arrangements for combating terrorism as suggested in point 15 of the JHA Council conclusions adopted on 21 September 2001.*

<sup>1</sup> Available on the Council website:

<http://ue.eu.int/newsroom/>

<sup>2</sup> Available in the Council register of documents:

<http://register.consilium.eu.int/>

*Justification*

*It seems preferable to recall not only the JHA Conclusions but also the European Council action plan for combating terrorism and its road map of the measures to be implemented at European and national level. Since its adoption this road-map is regularly updated and public (even if it is not transmitted to the European Parliament).*

## Amendment 15

## Recital 3

3. It is necessary to improve the national legal systems in the fight against terrorism and their implementation.

3. It is necessary to improve the national legal systems in the fight against terrorism and their implementation, ***and in their respect for human rights and civil liberties.***



*Justification*

*It is preferable to recall that measures taken in the fight against terrorism must be compatible with the principles of respect for human rights and civil liberties.*

Amendment 16  
Recital 4 a (new)

***4 a. Recalling that the Framework Decision on combating terrorism of 13th June 2002 already provides a system of implementing and monitoring EU anti-terrorism legislation, it is desirable to complement this with a general mechanism for the evaluation of the national arrangements in the fight against terrorism adopted within the framework of the road-map approved by the European Council and of the co-operation between Member States particularly in criminal matters.***

*Justification*

*See the justification to amendment 14.*

Amendment 17  
Recital 5

5. It is also desirable, in accordance with the content of the abovementioned ***Council mandate of 20 September 2001***, to establish a mechanism, which in the context of the co-operation provided for in the Treaty on European Union, enables Member States to evaluate, on a basis of equality and mutual confidence, their national legal provisions

5. It is also desirable, in accordance with the content of the abovementioned ***European Council Action plan and particularly of point 34 of the road-map implementing that plan*** to establish a mechanism, which in the context of the co-operation provided for in the Treaty on European Union, enables Member States to evaluate, on a basis of

designed to fight against terrorism, as well as their implementation.

equality and mutual confidence, their national legal provisions designed to fight against terrorism **and respect human rights and civil liberties**, as well as their implementation.

*Justification*

*Self-explanatory.*

Amendment 18  
Article 1, paragraph 1

1. Without prejudice to the competence of the **Community**, a mechanism for peer evaluation of the national arrangements in the fight against terrorism, on the basis of considerations of a legislative nature, within the framework of international cooperation between Member States, shall be established in accordance with the detailed rules set out below.

1. Without prejudice to the competence of the **Union, and with the aim of complementing the Framework Decision of June 13th 2002 on combating terrorism**, a mechanism for peer evaluation of the national arrangements in the fight against terrorism, on the basis of considerations of a legislative nature, within the framework of international cooperation between Member States **and police and judicial cooperation in criminal matters**, shall be established in accordance with the detailed rules set out below.

*Justification*

*The amendment seeks to clarify the field of application of the mechanism created by the Initiative.*

Amendment 19  
Article 2

1. For each evaluation exercise, 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 a Council Working Party subordinate to it to carry out the evaluation or to carry it out itself.

In addition, the Article 36 Committee shall decide the frequency of each evaluation exercise.

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.

1. For each evaluation exercise, 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.

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

In addition, the Article 36 Committee shall decide the frequency of each evaluation exercise.

2. The *General Secretariat* of the Council shall prepare the evaluation. *The* General Secretariat of the Council shall use in particular the national experts seconded to it for that purpose. The Commission shall be fully involved in the preparatory work.

*Justification*

*It is not appropriate for some of the tasks in the initiative to be given to the Presidency.*

Amendment 20  
Article 3

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

1. Each Member State shall send the General Secretariat of the Council 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

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.**

evaluation exercise.

2. The **Article 36 Committee or the Working Party designated for the purpose** shall draw up a list of the experts designated by the Member States.

### *Justification*

*See justification above.*

### Amendment 21 Article 5

The **Presidency** shall, with the assistance of the **General Secretariat of the Council and the Commission**, 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. In this context, where appropriate, the opinion of any Council Working Party with competence in the subject matter covered by the evaluation shall be requested. 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.

The **General Secretariat of the Council** shall, with the assistance of the Commission, 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. In this context, where appropriate, the opinion of any Council Working Party with competence in the subject matter covered by the evaluation shall be requested. 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.

## *Justification*

*See justification above.*

### Amendment 22

#### Article 8

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, at the end of a complete evaluation exercise, inform the Council by the appropriate means 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 at the end of a complete**

1. The **General Secretariat of the Council** 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 **Article 36 Committee or the Working Party designated for the purpose** shall, at the end of a complete evaluation exercise, inform the Council by the appropriate means 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. **The Presidency shall inform the European Parliament and the Commission at the end of a complete evaluation exercise of the**

evaluation exercise of the implementation of the evaluation mechanism.

implementation of the evaluation mechanism.

*Justification*

*Self-explanatory.*

Amendment 23  
Article 9, paragraph 2

The report drawn up within the framework of this Decision shall be a ***restricted*** document. 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.

The report drawn up within the framework of this Decision ***could*** be a ***sensitive*** document, ***in the terms of Article 9 of Regulation 1049/2001***. 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.

*Justification*

*The arrangements within the Council concerning the publication of these reports should not limit the provision of information to the Parliament as foreseen in the Regulation on access to documents which requires that sensitive information is provided to the EP under arrangements agreed between the institutions.*

## EXPLANATORY STATEMENT

### Introduction

Combating terrorism is a real challenge to the world and to Europe where, over the recent years, there is hardly a country which has not been affected, either directly or indirectly by this miserable kind of violence. The European Parliament is in full agreement with the Council about the need to combat terrorism and has not hesitated to prove its support in many occasions.

Terrorist activities attack the most fundamental human right: the right to life. They can take different forms but they always have the same consequences: they create great suffer and enormous pain to the victims and their families and they constitute an assault on our open, tolerant and multicultural societies by undermining democracy, parliamentary institutions and the territorial integrity of States. In the area of liberty, security and freedom that we are building, terrorism remains one of the major obstacles to making it a reality.

The formal adoption of the Framework Decision on combating terrorism and the Framework Decision on an European Arrest Warrant at the recent Justice and Home Affairs Council meeting on 13-14 June marks a significant step forward in the battle against terrorism. Within the EU there is now a common definition for all Member States of what activities are considered to be terrorism and a new judicial instrument which facilitates the prosecution throughout the EU, within very short delays, of people involved in terrorist acts and avoids the difficulties of the old extradition procedures (for example by abolishing the principle of double criminality for many offences including terrorism).

These are examples of important measures adopted in the fight against terrorism, but alone are not sufficient and they need to be accompanied by other horizontal measures to assure their correct, efficient and coherent implementation. This is the purpose of the Decision: to facilitate co-operation between the police and judicial authorities in the fight against terrorism.

Moreover, by this Decision the EU accomplishes the objective settled down in the Common Position 2001/931/PESC of 27.12.01, which established in its Article 4 the need for co-operation in criminal matters for preventing and combating terrorist acts.

The rapporteur broadly agrees with the Spanish initiative which seeks to improve police co-operation through the provision of information to Europol and to improve judicial co-operation through the provision of information to Eurojust.

### **1. Amendments to the proposal on the implementation of specific measures for police and judicial cooperation to combat terrorism in accordance with Article 4 of Common Position 2001/931/CFSP**

The rapporteur has introduced amendments which :

- provide a reminder that fundamental rights should be respected;
- recall the principles already in force for Europol and Eurojust and thereby clarify that the information transferred under the present Decision should be limited to criminal investigations of terrorist activities;
- specifically refer to the data protection rules which will apply to data which is transferred, including if it is transferred to third parties;
- require each Member State to have an Eurojust correspondent responsible for terrorism, rather than giving the Member States the option to appoint another competent authority. It is important to have national correspondents who in each Member State centralise information on terrorist activities;
- aim to ensure that the possibility of creating joint investigation teams will be fully exploited in the fight against terrorism; and
- require an annual evaluation of the effectiveness of the Decision and that the European Parliament should be informed of the evaluation during the annual debate on freedom, security and justice.

## **2. Amendments to the proposal on establishing a mechanism for evaluating the legal systems and their implementation at national level in the fight against terrorism**

The rapporteur has included amendments which refer to the action plan for fighting terrorism and the framework decision on combating terrorism of 13 June 2002 and also take into account the comments of the Commission as notified in writing on 23 July 2002.

- reinforce the obligations to inform the European Parliament.

### **Consultation of the Parliament**

Although the rapporteur shares the aims of the draft decision, he notes that the Council initiative reached political agreement on the draft initiative on the implementation of Article 4 of Common Position 2001/931/CFSP in the JHA Council meeting of 13-14 June without waiting for the opinion of the European Parliament. However, the text dated 14 June on which the Council reached general agreement was subsequently sent to the European Parliament. Pursuant to the new Article 61 of the Rules of Procedure (as amended by the Corbett report), the competent Committee may decide on which text it will make its amendments. The rapporteur recommended that the Committee work on the basis of the latter text. The European Parliament has been given deadline for its opinion of 5 October.

The European Parliament calls on the Council to consider seriously its concerns before adopting formally the final Decision.



## 1. MINORITY OPINION

pursuant to Rule 161 of the Rules of Procedure  
by Maurizio Turco

on the initiative by the Kingdom of Spain with a view to adopting a Council Decision on the implementation of specific measures for police and judicial cooperation to combat terrorism in accordance with Article 4 of Common Position 2001/931/CFSP (7756/4/2002 – C5-0319/2002 – 2002/0808(CNS))

Despite the excellent work done by the rapporteur - who accepted a large number of amendments to improve the basic text in committee -, the Kingdom of Spain's proposal for the implementation of specific measures for police and judicial cooperation to combat terrorism cannot be supported by the Radical Members. The aim of improving the speed and efficiency of exchanges of information on the criminal investigations carried out by the Member States into persons, groups and entities accused of terrorism is certainly to be endorsed. However, the proposal to use joint investigation teams, as well as Europol and Eurojust to facilitate such exchanges raises problems which Parliament has mentioned on several occasions: the absence of democratic and judicial control over Europol and Eurojust and their lack of connection to the Community; the lack of specific guarantees concerning the action of members of the joint investigation teams. Such aspects, relating to investigations and criminal procedure, are in many cases codified in detail at national level as part of the Member States' legal codes or even their constitutions so as to be able to determine the rights and duties of the parties involved. All this is lacking at European level, where there is a tendency to take ad hoc decisions on the basis of the latest priorities, thereby creating elements of criminal law and criminal procedure on an extempore basis, with negative effects on the citizens' rights and freedoms.

## 2. MINORITY OPINION

pursuant to Rule 161 of the Rules of Procedure  
by Maurizio Turco

on the initiative by the Kingdom of Spain and with a view to adopting a Council Decision establishing a mechanism for evaluating the legal systems and their implementation at national level in the fight against terrorism  
(8811/2/2002 – C5-0281/2002 – 2002/0809(CNS))

The 'mechanism for evaluating the legal systems and their implementation at national level in the fight against terrorism', as explained by the Commission, and despite the amendments tabled by the rapporteur with a view to improving the text, is still unacceptable because it is incomplete and unspecific and its legal basis is misapplied. Once again, the fight against terrorism is being used as a pretext for riding roughshod over basic principles and rules.

The initiative goes beyond what is authorised under the proposed legal basis, namely Article 34(2)(c) of Title VI of the TEU (which would allow the establishment of an instrument for evaluating legislation relating to judicial cooperation in criminal matters and the implementation thereof, but not the national legal systems), Article 29 of the TEU (which does not relate to evaluations) and Article 34(1) of the TEU (which allows Member States to inform and consult one another for the sole purpose of coordinating their action).

Moreover, this evaluation comes on top of that already provided for under the Framework Decision of 13 June 2002 on the fight against terrorism, which provides for an evaluation by the Council by the end of 2003, on the basis of a report from the Commission.

Lastly, the constant activity on the part of the Council, the Commission and the Member States in fighting terrorism conceals their shortcomings in strategic and intelligence capacity and is a growing threat to fundamental rights and freedoms.

## COMMISSION POSITION

Letter of 23 July 2002 from Mr J.A. Fortescue, Director-General at the European Commission (Directorate-General for Justice and Home Affairs), to the vice-chairman of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

Dear Mr Vice-Chairman,

Owing to a lack of time, it was not possible to discuss the Spanish initiatives on police and judicial cooperation to combat terrorism and the mechanism for evaluating the legal systems and their implementation at national level in the fight against terrorism at the meeting of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs of 8 and 9 July.

On that occasion, you asked the Commission to send in writing the comments it had intended to make at the meeting. In view of these exceptional circumstances, I am forwarding to you the substance of the Commission's position on the initiative on police and judicial cooperation to combat terrorism (see Annex I), and that of the Commission's services on the initiative for a mechanism for evaluating the legal systems and their implementation at national level in the fight against terrorism (see Annex II).

(closing formula and signature)

**INITIATIVE BY THE KINGDOM OF SPAIN FOR POLICE AND JUDICIAL  
COOPERATION TO COMBAT TERRORISM**

The Commission welcomes the Spanish initiative as it considers that it is appropriate that the Council adopts further measures to flesh out Article 4 of Common Position 2001/931.

It is difficult to provide for strengthened police and judicial cooperation in this field, as referred to in Art.4 of the Common Position, whilst at the same time ensuring we do not further complicate existing arrangements.

In this sense, the Commission's major concerns and considerations have been taken into account in the new text, which, in our view, represents a significant improvement on the original initiative.

The Commission therefore considers that the Revised Version of the initiative, on which the 13 June JHA Council reached political agreement, achieves this difficult balance. Consequently the Commission can give it its support.

The key of the new instrument is to ensure that Europol and Eurojust receive the information they need to carry out their tasks. The new text now makes it clear that the communication of the information is indeed to be in conformity with the Europol Convention and the Eurojust Decision, and using existing structures.

Finally the Commission considers that there should be a clear political message to Europol and Eurojust that they should in this area cooperate effectively.

**INITIATIVE BY THE KINGDOM OF SPAIN WITH A VIEW TO ADOPTING A COUNCIL DECISION ESTABLISHING A MECHANISM FOR EVALUATING THE LEGAL SYSTEMS AND THEIR IMPLEMENTATION AT NATIONAL LEVEL IN THE FIGHT AGAINST TERRORISM**

The position of the Commission services on the above draft initiative is as follows:

1. As regards the legal basis:

A legal instrument based on Article 34 (2)(c) of Title VI of the TEU cannot establish a mechanism for peer evaluation of the national legal systems in general, but solely of legislation and its implementation in areas relating to police cooperation and judicial cooperation in criminal matters, i.e. areas of competence covered by Title VI.

Article 29 of the TEU does not relate to evaluations and Article 34(1) refers to the need to inform and consult one another (which could include a peer evaluation mechanism) but only 'with a view to coordinating their action'. The instrument should therefore at least clarify this objective.

2. As regards the substance:

The Commission considers that, in view of its intergovernmental nature, 'peer evaluation' (based on the mechanism used in the FATF) should no longer be seen as an appropriate method for evaluating the implementation and establishment of legal acts under Title VI. Since the entry into force of the Treaty of Amsterdam all Title VI legal instruments aimed at the approximation of national laws have their own evaluation arrangements.

In particular, the Framework Decision of 13 June 2002 on combating terrorism<sup>1</sup>, which requires the Member States to take the necessary measures by 31 December 2002, lays down, in Article 11(2) and (3), the procedure for a specific evaluation to be completed by 31 December 2003.<sup>2</sup>

Given, firstly, that a legal instrument based on Article 34(2) of Title VI of the TEU may only be used to establish a mechanism for evaluating legislation and its implementation in areas relating to police cooperation and judicial cooperation in criminal matters, i.e. areas

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<sup>1</sup> OJ L 164, 22.6.2002, pp. 3-7.

<sup>2</sup> *Article 11*  
Implementation and reports

1. Member States shall take the necessary measures to comply with this Framework Decision by 31 December 2002.

2. By 31 December 2002, Member States shall forward to the General Secretariat of the Council and to the Commission the text of the provisions transposing into their national law the obligations imposed on them under this Framework Decision. On the basis of a report drawn up from that information and a report from the Commission, the Council shall assess, by 31 December 2003, whether Member States have taken the necessary measures to comply with this Framework Decision.

3. The Commission report shall specify, in particular, transposition into the criminal law of the Member States of the obligation referred to in Article 5(2).

of competence covered by Title VI, and, secondly, that the most important instrument under Title VI with regard to the fight against terrorism already provides for an evaluation mechanism, the Spanish initiative would seem to be devoid of substance.

Moreover, while the Council had asked for 'an easier and swifter form of the evaluation mechanism defined in the Joint Action ...', the proposed text is copied word-for-word from the text of the Joint Action, with the references to the Multidisciplinary Working Group on Organised Crime being replaced with references to 'the Article 36 Committee'.

Lastly, a more general question needs to be raised concerning the role of the Presidency (the text repeatedly refers to 'the Presidency' and assigns it a number of tasks: Articles 2, 3, 4, 5 and 8). Is it acceptable, from an institutional point of view, that 'the Presidency', which is not an institution, should, under a legislative decision, be given such competences, which far exceed the tasks which may be assigned to it under the Rules of Procedure: sole right to propose the subject of the evaluation, choice of Member States' experts, drafting of the questionnaire, etc.?

3. As regards submission of the report to the Council:

The text makes no provision for the report to be submitted to the Council, which is contrary to the conclusions of the JHA Council meeting of 20 September 2001 (The Council wishes to receive an evaluation report together with proposals by the end of 2002').