

II

(Preparatory Acts pursuant to Title VI of the Treaty on European Union)

Initiative of the Kingdom of Spain with a view to the adoption of a Council Decision establishing a mechanism for evaluating national legal provisions relating to the fight against terrorism and their implementation

(2002/C 151/08)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 29 and Article 34(1) and (2)(c) 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 Council Joint Action 97/827/JHA 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 ⁽³⁾, in order to define a procedure for the peer assessment of national anti-terrorist arrangements.
- (2) It is necessary to improve the national legal systems in the fight against terrorism and their implementation.
- (3) The primary responsibility for designing each national legal provision 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.
- (4) It is also desirable to establish a mechanism which, in the context of the cooperation 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 designed to fight against terrorism, as well as their implementation,

HAS DECIDED AS FOLLOWS:

Article 1

Creation of the evaluation mechanism

1. Without prejudice to Community competences, and in accordance with the detailed rules set out below, a mechanism for peer evaluation of the national legal provisions

in the fight against terrorism and their implementation, and in particular of actions against terrorism within the framework of international cooperation between Member States, is hereby established.

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. For each exercise the Article 36 Committee shall define, on a proposal from the Presidency, the specific subject of the evaluation as well as the order in which Member States are to be evaluated.

Further, depending on the specific subject chosen for the evaluation, the Article 36 Committee shall designate the Council Working Party which will carry out the said evaluation or, where appropriate, it may decide to carry it out itself.

2. The Presidency of the Council shall prepare the evaluation, assisted by the General Secretariat of the Council, in particular with the aid of the national experts seconded 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 to 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, where appropriate, to the Working Party designated for the purpose.

⁽¹⁾ OJ C ...

⁽²⁾ OJ C ...

⁽³⁾ OJ L 344, 15.12.1997, p. 7.

*Article 4***Evaluation team**

1. 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.
2. 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.
3. 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, where appropriate, 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 shall attach 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 15 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 observations thereon 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, where appropriate, 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, where appropriate, 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, where appropriate, 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 take effect from the day of its publication in the *Official Journal of the European Communities*.

Done at Brussels . . .

For the Council

The President

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