

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

**COUNCIL DECISION**  
**of 28 November 2002**  
**establishing a mechanism for evaluating the legal systems and their implementation at national level in the fight against terrorism**

(2002/996/JHA)

THE COUNCIL OF THE EUROPEAN UNION,

HAS DECIDED AS FOLLOWS:

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

*Article 1*

Having regard to the initiative of the Kingdom of Spain <sup>(1)</sup>,

**Establishment of the evaluation mechanism**

Having regard to the opinion of the European Parliament <sup>(2)</sup>,

1. A mechanism for peer evaluation of the national arrangements in the fight against terrorism within the framework of international cooperation between Member States shall be established in accordance with the detailed rules set out below.

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 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 <sup>(3)</sup>, in order to define a procedure for the peer assessment of national anti-terrorist arrangements.

2. Each Member State shall undertake to ensure that its national authorities cooperate closely 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**

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

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.

(3) 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.

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.

(4) 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 cooperation provided for in the Treaty, 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,

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.

3. The first evaluation exercise shall finish no later than mid-2003.

<sup>(1)</sup> OJ C 151, 25.6.2002, p. 14.

<sup>(2)</sup> Opinion delivered on 24 September 2002 (not yet published in the Official Journal).

<sup>(3)</sup> OJ L 344, 15.12.1997, p. 7.

*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 four weeks 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 and by the Commission.

*Article 5***Preparation of the questionnaire**

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.

*Article 6***Evaluation visit**

No later than six weeks after receiving the reply to the questionnaire, where it is considered appropriate, the evaluation team shall travel to that Member State, with a view to clarifying the replies to the questionnaire, 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 receiving the replies to the questionnaire or after the visit referred to in Article 6 if such a visit has taken place, the evaluation team shall draw up a concise draft report and submit it to the Member State evaluated, which shall give its opinion within six weeks. 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, 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 accordance with Article 9(2), the Presidency shall inform the European Parliament at the end of a complete evaluation exercise of the implementation of the evaluation mechanism.

*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 shall therefore ensure that the experts they appoint under Article 3 have an appropriate security level.

2. The report drawn up within the framework of this Decision shall be at least a restricted document. However, the Member State evaluated may publish the report on its own responsibility. It shall 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***Date of effect**

This Decision shall take effect on the day of its publication in the Official Journal.

*Article 12***Publication**

This Decision shall be published in the Official Journal.

Done at Brussels, 28 November 2002.

*For the Council*  
*The President*  
B. HAARDER

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