Fight against terrorism: implementation of national legal provisions. Initiative Spain

2002/0809(CNS) - 31/05/2002 - Initial legislative proposal

In a note addressed to Mr. Javier SOLANA, Secretary-General of the Council of the European Union from Mr Javier CONDE, Permanent Representative of the Kingdom of Spain, this documents proposes an explanatory memorandum of the draft decision establishing a mechanism for evaluating the legal systems and their implementation at national level in the fight against terrorism. In this note, the Spanish Delegation reveals the necessity of the draft decision, in particular with regard to the growing insecurity in the Member States and the rise in terrorism after the 11 September 2001 attacks in the United States. The objective is to propose an alternative and more rapid version of the evaluating mechanism which has been in place since 1997, with the implementation of the Joint Action 97/827/JHA. The present proposal by the Spanish Presidency is inspired from this measure but it lays down some new provisions in order to guarantee the flexibility needed in the implementation of the evaluation mechanism. This proposal therefore sets out 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: - 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. - 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. - 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. - the first evaluation exercise shall finish no later than the end of 2002. - 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. - 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. - On the basis of the list, 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 teamshall 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. - 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 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. - 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. - 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. - 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. - 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. - 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.