

JHA  
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PEC

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REV 6

LIMITE

CRIMORG 5

**NOTE**

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from : Presidency

to : Coreper/Council

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**Subject: Draft joint action establishing a mechanism for evaluating the application and implementation at national level of international undertakings in the fight against organized crime**

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Delegations will find attached the draft joint action as amended following Coreper's discussions on 19 November 1997 and the meeting of JHA Counsellors on 24 November 1997 at which the European Parliament's Opinion was examined.

After finalization by the Working Party of Legal/Linguistic Experts, the draft joint action will be submitted to Coreper/Council for approval as an "I/A" item.

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**DRAFT JOINT ACTION**  
**establishing a mechanism for evaluating**  
**the application and implementation at national level**  
**of international undertakings**  
**in the fight against organized crime**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article K.3(2)(b) thereof,

Having regard to the report from the High-Level Group on Organized Crime approved by the Amsterdam European Council on 16 and 17 June 1997, and in particular Recommendation No 15 of the Action Plan,

Having regard to experience within the Financial Action Task Force on Money Laundering,

Having regard to the Council conclusions on the report from the High-Level Group on Organized Crime,

Having regard to the Council Decision of 26 June 1997 on the rules applicable to national experts on detachment to the General Secretariat of the Council in the context of the implementation of the plan to step up the fight against organized crime,

Whereas there is a need to improve the implementation at national level of the instruments adopted within the framework of the Union and elsewhere, particularly with a view to combating organized crime;

Whereas such implementation is primarily the responsibility of each Member State and whereas, in the framework of their concertation within the European Union, Member States encourage each other to improve the application of the cooperation instruments subscribed to at international level;

Whereas it is also desirable to establish a mechanism to enable Member States, as an extension of such concertation, to evaluate on a basis of equality and mutual confidence the implementation by each of them of cooperation instruments intended to combat international organized crime;

Having examined the views of the European Parliament <sup>(1)</sup> following the consultation conducted by the Presidency in accordance with Article K.6 of the Treaty,

HAS ADOPTED THIS JOINT ACTION:

## Article 1

### Objective

- (a) Without prejudice to the competence of the European Community, a mechanism for peer evaluation of the application and implementation at national level of Union and other international acts and instruments in criminal matters, as well as of the resulting legislation and practices at national level and of international cooperation actions in the fight against organized crime in the Member States shall be established in accordance with the detailed rules set out below.
- (b) Each Member State shall undertake to ensure that its national authorities cooperate fully with the evaluation teams set up under this joint action with a view to its implementation, with due regard for the rules of law and ethics applicable at national level.

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<sup>(1)</sup> Opinion delivered on 20 November 1997 (not yet published in the Official Journal).

## Article 2

### Evaluation subjects

- (a) Each year, the specific subject of the evaluation as well as the order in which Member States are to be evaluated, at a rate of at least five per year, shall be defined, on a proposal from the Presidency, by the members of the Multidisciplinary Working Party on Organized Crime (hereinafter "MDW").
- (b) The evaluation shall be prepared by the Presidency of the Council, assisted by the General Secretariat of the Council. The Commission shall be fully involved in the preparatory work.
- (c) The first round of evaluations shall begin no later than three months after the entry into force of this joint action.

## Article 3

### Designation of experts

- (a) Each Member State shall send the General Secretariat of the Council, on the Presidency's initiative, the names of one to three experts having substantial experience of the subject to which the evaluation relates in the field of combating organized crime, in particular in a law-enforcement service such as the police, customs or a judicial or other authority, and who are prepared to participate in at least one evaluation exercise.
- (b) The Presidency shall draw up a list of the experts designated by the Member States and shall forward it to the members of the MDW.

## Article 4

### Evaluation team

On the basis of the list referred to in Article 3, the Presidency shall choose a team of three experts for each Member State to be evaluated, ensuring that they are not nationals of the Member State in question. The names of the experts chosen shall be notified to the MDW. These experts shall constitute the evaluation team. Depending on the subjects to be evaluated, the Commission may take part in the proceedings of the teams of experts. 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 objective defined in Article 2(c) and shall submit it to the MDW for approval. 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 in the time allowed and as fully as possible and attaches where necessary all legal provisions and technical and practical data required.

## Article 6

### On-the-spot evaluation

Once it has received the reply to the questionnaire, the evaluation team shall visit the Member State being evaluated to meet the political, administrative, police, customs and judicial authorities or any other relevant body in accordance with a programme of visits arranged by the Member State visited which takes account of the wishes expressed by the evaluation team.

## Article 7

### Preparation of the draft report

No later than one month 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 for its opinion. If it deems it appropriate, it shall amend its report in the light of the comments made by the Member State in question.

## Article 8

### Discussion and adoption of the report

- (a) The Presidency shall forward the draft report, which shall be confidential, to the members of the MDW, together with any of the comments of the Member State evaluated which were not accepted by the evaluation team.
- (b) The MDW meeting 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 MDW shall then discuss the draft report and shall adopt its conclusions by consensus.
- (c) 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.
- (d) In compliance with Article 9(b), the Presidency shall inform the European Parliament each year of the implementation of the evaluation mechanism.
- (e) At the end of a complete evaluation exercise, the Council shall take the appropriate measures.

## Article 9

### Confidentiality

- (a) The expert 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 level of security clearance, where applicable.
- (b) The report drawn up within the framework of this joint action shall be confidential. However, the Member State concerned 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 necessary, make adjustments to this joint action.

## Article 11

### Publication in the Official Journal

This joint action shall be published in the Official Journal.

It shall enter into force on the day of its publication.

Done at Brussels, ....

For the Council  
The President

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