

**Initiative of the French Republic with a view to adopting a Council Framework Decision on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds from crime**

(2000/C 243/03)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Articles 31(a), (c) and (e) and 34(2)(b) thereof,

Having regard to the initiative of the French Republic,

Having regard to the opinion of the European Parliament,

Whereas:

- (1) The Council adopted Joint Action 98/699/JHA of 3 December 1998 on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds from crime<sup>(1)</sup>.
- (2) Account should be taken of the Presidency conclusions of the European Council meeting in Tampere on 15 and 16 October 1999.
- (3) The European Council accepts that the principle of mutual recognition should also apply to pre-trial orders, in particular to those which would enable competent authorities quickly to secure evidence and to seize assets which are easily movable.
- (4) The European Council, noting that serious forms of crime increasingly have tax and duty aspects, calls upon Member States to provide full mutual legal assistance in the investigation and prosecution of this type of crime.
- (5) The European Council calls for the approximation of criminal law and procedures on money laundering (e.g. tracing, freezing and confiscating funds), adding that the scope of criminal activities which constitute principal offences for money laundering should be uniform and sufficiently broad in all Member States.
- (6) The Member States have subscribed to the principles in the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, hereinafter referred to as 'the 1990 Convention'.

- (7) This Framework Decision does not affect the application of more favourable provisions in bilateral or multilateral agreements concluded between the Member States, or in the European Convention on Mutual Assistance in Criminal Matters, in arrangements concluded in the area of mutual assistance in criminal matters on the basis of uniform legislation or in a special system providing for the reciprocal application of mutual assistance measures within their respective territories,

HAS ADOPTED THIS FRAMEWORK DECISION:

*Article 1*

**Reservations in respect of the 1990 Convention**

In order to enhance action against organised crime, Member States shall take the necessary steps not to make or uphold reservations in respect of the following articles of the 1990 Convention:

- (a) Article 2, in so far as the offence is punishable by deprivation of liberty or a detention order for a maximum of more than one year;
- (b) Article 6, in so far as serious offences are concerned. Such offences should in any event include offences which are punishable by deprivation of liberty or a detention order for a maximum of more than one year or, as regards those States which have a minimum threshold for offences in their legal system, offences punishable by deprivation of liberty or a detention order for a minimum of more than six months.

*Article 2*

**Penalties**

Each Member State shall take the necessary steps to ensure that the offences referred to in Article 6(1)(a) and (b) of the 1990 Convention, as they result from the Article 1(b) of this Framework Decision, are punishable by deprivation of liberty for a maximum of not less than five years.

<sup>(1)</sup> OJ L 333, 9.12.1998, p. 1.

## Article 3

**Value confiscation**

Each Member State shall take the necessary steps to ensure that its legislation and procedures on the confiscation of the proceeds from crime also allow for the confiscation of property the value of which corresponds to such proceeds, both in purely domestic proceedings and in proceedings instituted at the request of another Member State, including requests for the enforcement of foreign confiscation orders. However, Member States may exclude the confiscation of property the value of which corresponds to the proceeds from crime in cases in which that value would be less than EUR 4 000. The words 'property', 'proceeds' and 'confiscation' shall have the same meaning as in Article 1 of the 1990 Convention.

## Article 4

**Identification and tracing of suspected proceeds**

At least in investigations relating to serious offences as defined in Article 1(b):

- to permit assistance to be given at the earliest possible stages in an investigation, each Member State shall take the necessary steps to ensure that its legislation and procedures enable it to identify and trace suspected proceeds from crime, at the request of another Member State, where there are reasonable grounds to suspect that a criminal offence has been committed,
- the optional grounds for refusal in Article 18(2) and (4)(a) and the first of the two optional grounds for refusal in Article 18(3) of the 1990 Convention may not be invoked between Member States of the European Union.

## Article 5

**Processing of requests for mutual assistance**

Member States shall take the necessary steps to ensure that all requests from other Member States which relate to asset identification, tracing, freezing or seizing and confiscation are processed with the same priority as is given to such measures in domestic proceedings.

## Article 6

**Prevention of the dissipation of assets**

Member States shall take the necessary steps to minimise the risk of assets being dissipated, including such measures as may be necessary to ensure that assets which are the subject of a request from another Member State may be frozen or seized expeditiously so that a later confiscation request is not frustrated.

## Article 7

**Repeal of existing provisions**

Articles 1, 3, 5(1) and 8(2) of Joint Action 98/699/JHA are hereby repealed.

## Article 8

**Implementation**

1. Member States shall adopt the measures necessary to comply with the provisions of this Framework Decision by 31 December 2001.
2. Member States shall forward to the General Secretariat of the Council and to the Commission of the European Communities, by the same date, the text of the provisions transposing into their national law the obligations arising from them from this Framework Decision and, where appropriate, the notifications made pursuant to Article 40(2) of the 1990 Convention. On the basis of this information and a written report from the Commission, the Council shall ascertain, by 30 June 2002 at the latest, to what extent Member States have taken the necessary measures to comply with this Framework Decision.

## Article 9

**Entry into force**

This Framework Decision shall enter into force on the day of its publication in the *Official Journal of the European Communities*.

Done at ... .

For the Council

The President

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