

Combating organised crime: confiscation of crime-related proceeds, instrumentalities and property. Framework Decision. Initiative Denmark

2002/0818(CNS) - 17/12/2007 - Follow-up document

Article 6 of the Council Framework Decision on the confiscation of crime-related proceeds, instrumentalities and property requires the Commission to produce a written report on the measures taken by the Member States to comply with the Framework Decision. Council Framework Decisions are binding upon the Member States as to the result to be achieved but leave to the national authorities the choice of form and methods. They do not have direct effect. As the Commission has no powers under the third pillar to launch infringement proceedings against a Member State, the nature and purpose of this report is merely to provide a factual assessment of the transposition measures adopted.

The report focuses on an assessment of Articles 2 and 3, which form the core part of the Framework Decision, and the main obligations in the light of the Decision's aims. At the time of writing, 16 Member States (BE, BG, CZ, DE, DK, EE, FI, FR, HU, IE, LT, MT, NL, PL, RO, SE) had submitted their legislation. Ten of them (BE, CZ, DE, DK, EE, FI, FR, HU, NL, PL) had transposed the Framework Decision almost wholesale, with the exception in many cases of Article 1 and in some cases of certain provisions that are minor compared with the general thrust of the Framework Decision, while six (BG, IE, LT, MT, RO, SE) had transposed it in part. Five Member States (EL, IT, LV, LU, PT) stated that they were in the process of preparing the relevant legislation. Six Member States (AT, CY, ES, SK, SI, UK) have not yet sent their national measures to the Commission.

Thus the main findings of the report are that, to date, only 16 Member States have sent the text of provisions transposing the Framework Decision into national law. The Commission is concerned that so little progress has been made. It, therefore, reminds the Member States of the importance that they themselves attach to combating organised crime by means of depriving it of its financial resources and gain. The Commission would also point out that this importance is reflected in the Council of Europe Conventions of 1990 and 2005 on laundering, search, seizure and confiscation of the proceeds from crime, and in the United Nations Convention of 2000 against Transnational Organised Crime. To combat organised crime effectively within the European Union, it is vital that solid and complete national provisions are adopted.

The Commission invites the Member States to consider this report and to use this opportunity to send it, and the General Secretariat of the Council, any further relevant information in order to comply with their obligations under Article 6 of the Framework Decision. The Commission would encourage those Member States which stated that they were in the process of preparing the necessary legislation to adopt it as quickly as possible and to send the text adopted to the General Secretariat of the Council and to the Commission. Lastly, the Commission regrets that six Member States have still not provided any information and invites them to send all information regarding transposition of the Framework Decision into their national law as quickly as possible. The Commission intends to adopt a Communication on the proceeds of crime at the end of 2008, in which it will analyse measures for the confiscation and recovery of property obtained through criminal activity and will examine how to strengthen cooperation between police and judicial authorities so as to deprive criminals of their illicit gain.