Judicial cooperation: orders freezing assets or evidence. Framework decision. Initiative France, Sweden and Belgium

2001/0803(CNS) - 22/12/2008 - Follow-up document

This report is based on Article 14 of the Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence. The main objective of this Framework Decision is to establish the rules under which a Member State shall recognise and execute in its territory an order freezing property or evidence issued by a judicial authority of another Member State in the context of criminal proceedings. It is based on the system of mutual recognition of judicial decisions in the pre-trial phase under which a freezing order is recognised without any formality, grounds for its refusal are strictly limited and the principle of dual criminality is partly abolished.

According to the Commission's report, implementation of the Council Framework Decision 2003/577 /JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence in the national legislation of the Member States of the European Union is not satisfactory. This conclusion is mainly drawn from the low number of notifications, of which some implementing laws do not even refer to the Framework Decision (provisions were adopted in view of implementation of some other international law instruments). Cyprus and the UK have covered the provisions of the Framework Decision only partly (Cyprus covered only freezing of property and the UK covered only provisions in relation to evidence). The legislation sent by Slovenia also shows that this Member State is still using the traditional rules on mutual legal assistance as regards requests for freezing and therefore it has not implemented the principle of mutual recognition in that regard.

The 19 national legislations received by the Commission indicate numerous omissions and misinterpretations. There is still room for improvement, especially concerning direct contact between judicial authorities, grounds for refusal to recognise or execute the freezing order and also reimbursement. However, the swift execution of freezing orders seems ensured.

The Commission invites Member States to consider this report and to take the opportunity to provide all further relevant information to the Commission and to the Council Secretariat, in order to fulfil their obligations under Article 14 of the Framework Decision. In addition, the Commission encourages those Member State that have signalled that they are preparing relevant legislation, to enact and notify these national measures as soon as possible.