Combating organised crime, judicial cooperation: application of the principle of mutual recognition to confiscation orders. Framework Decision. Initiative Denmark

2002/0816(CNS) - 06/10/2006 - Final act

PURPOSE : to facilitate cooperation between Member States as regards the recognition and execution of confiscation orders.

LEGISLATIVE ACT : Council Framework Decision 2006/783/JHA on the application of the principle of mutual recognition to confiscation orders.

CONTENT : the Council unanimously adopted this Framework Decision, which aims to facilitate cooperation between Member States as regards the mutual recognition and execution of orders to confiscate property. It will oblige a Member State to recognise and execute in its territory confiscation orders issued by a court competent in criminal matters of another Member State. The Framework Decision will not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty on European Union, and any obligations incumbent on judicial authorities in this respect shall remain unaffected.

The general principle is that the competent authorities in the executing State will, without further formality, recognise a confiscation order which has been transmitted in accordance with rules laid down in the Framework Decision and will take all the necessary measures for its execution.

The Framework Decision contains a list of offences for which, if they give rise to a confiscation

order and are punishable in the issuing State by a custodial sentence of a maximum of at least 3 years, execution of the confiscation order will take place without verification of the double criminality of the acts in the executing Member State.

These offences are as follows: participation in a criminal organisation; terrorism; trafficking in human beings; sexual exploitation of children and child pornography; illicit trafficking in narcotic drugs and psychotropicsubstances; illicit trafficking in weapons, munitions and explosives; corruption; fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' financial interests; laundering of the proceeds of crime; counterfeiting currency, including of the euro; computer-related crime; environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties; facilitation of unauthorised entry and residence; murder, grievous bodily injury; illicit trade in human organs and tissue; kidnapping, illegal restraint and hostage-taking; racism and xenophobia; organised or armed robbery; illicit trafficking in cultural goods, including antiques and works of art; swindling; racketeering and extortion; counterfeiting and piracy of products; forgery of administrative documents and trafficking therein; forgery of means of payment; illicit trafficking in hormonal substances and other growth promoters; illicit trafficking in nuclear or radioactive materials; trafficking in stolen vehicles; rape; arson; crimes within the jurisdiction of the International Criminal Court; unlawful seizure of aircraft/ships; sabotage.

The Council may decide to add other categories of offences to the list at any time, acting unanimously after consultation of the European Parliament.

The restitution of property to its rightful owner is not dealt with in this legislation and neither does the text prejudice the end to which the Member States apply the amounts obtained as a consequence of its application.

The practical operation of this Framework Decision presupposes close liaison between the competent national authorities involved, in particular in cases of simultaneous execution of a confiscation order in more than one Member State .

A confiscation order, together with the certificate provided for in the Framework Decision, the standard form for which is given in the Annex, may, in the case of a confiscation order concerning an amount of money, be transmitted to the competent authority of a Member State in which the competent authority of the issuing State has reasonable grounds to believe that the person against whom the confiscation order has been issued has property or income. There are similar rules for specific items of property.

The execution of the confiscation order shall be governed by the law of the executing State and its authorities alone shall be competent to decide on the procedures for execution and to determine all the measures relating to it. The executing State may not impose measures as an alternative to the confiscation order, including custodial sanctions or any other measure limiting a person's freedom, as a result of a transmission, unless the issuing State has given its consent.

Amnesty and pardon may be granted by the issuing State and also by the executing State.. Only the issuing State may determine any application for review of the confiscation order.

Money which has been obtained from the execution of the confiscation order shall be disposed of by the executing State as follows: a) if the amount obtained from the execution of the confiscation order is below EUR 10 000, or the equivalent to that amount, the amount shall accrue to the executing State; (b) in all other cases, 50 % of the amount which has been obtained from the execution of the confiscation order shall be transferred by the executing State to the issuing State.

It should be noted that this Framework Decision is related to that on the confiscation of crime-related proceeds, instrumentalities and property (CNS/2002/0818). It is also linked to Council Framework Decision 2003/577/JHA on the execution in the EU of orders freezing property or evidence (CNS/2001/0803) and that on money laundering, confiscation of instrumentalities and proceeds (CNS/2000/0814).

ENTRY INTO FORCE : 24/11/2006.

DATE OF APPLICATION : 24/11/2008.

- Member States shall communicate to the General Secretariat of the Council and to the Commission the text of the provisions transposing into their national law the obligations resulting from this Framework Decision. On the basis of a report established on the basis of this information by the Commission, the Council shall, by 24 November 2009, assess the extent to which Member States have taken the necessary measures to comply with the Framework Decision.

- Member States, acting as executing States, shall inform the Council and the Commission, at the beginning of the calendar year, of the number of cases in which Article 17(b) has been applied (decision not to recognise the confiscation order) and a summary of reasons for this. By 24 November 2013, the Commission shall establish a report on the basis of the information received, accompanied by any initiatives it may deem appropriate.