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

2002/0816(CNS) - 23/08/2010 - Follow-up document

This report from the Commission is based on Article 22 of the Council Framework Decision 2006/783 /JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders.

To recall, this Framework Decision applies the principle of mutual recognition to confiscation orders issued by a court competent in criminal matters for the purpose of facilitating enforcement of such confiscation orders in a Member State other than the one in which the confiscation order was issued. The Framework Decision applies to all offences in relation to which confiscation orders can be issued. Dual criminality checks were abolished in relation to 32 categories of offences listed in the Framework Decision.

Main conclusions: the report states that the **degree of implementation of Council Framework Decision 2006/783/JHA of 8 October 2006 in the national legislation of the Member States of the European Union is clearly not satisfactory**. Only 13 Member States implemented the FD and notified the Commission (at least informally) by the end of February 2010, fifteen months after the deadline set by the Framework Decision.

The national implementing provisions received from the thirteen Member States are generally satisfactory and can be considered to be in line with the Framework Decision, especially regarding the most important issues such as the abolition of dual criminality checks and the recognition of decisions without further formality. Unfortunately, the **analysis of grounds for refusal of recognition shows that almost all Member States included in their national legislation several additional grounds**. This practice is not in line with the Framework Decision.

The Commission invites all 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 22 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.

The partial and incomplete transposition of this instrument by Member States hampers substantively the full and effective application of the principle of mutual recognition in the European Union. It limits the role of judicial authorities in combating financial crime by **depriving criminals of the financial benefit they obtain from criminal conduct**. The Commission urges all those Member States which have not done so yet to take swift measures to implement this Framework Decision to the fullest extent. Furthermore, it invites those which have transposed it incorrectly, e.g. by including additional grounds for refusal, to review and align their national implementation legislation with the provisions of the Framework Decision. On the basis of the reactions to this report, the Commission will reflect on the need to revise this Framework Decision under the rules of the Treaty of Lisbon.