

Combating crime: money laundering, confiscation of instrumentalities and proceeds. Framework Decision. Initiative France

2000/0814(CNS) - 20/07/2000 - Legislative proposal

PURPOSE: French initiative regarding the adoption of a Council Framework Decision on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds from crime. **CONTENT:** In December 1998, the Council adopted Joint Action 98/699/JHA on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds from crime. The Tampere European Council, in October 1999, accepted 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. The European Council, noting that serious forms of crime increasingly have tax and duty aspects, called upon the Member States to provide full mutual legal assistance in the investigation and prosecution of this type of crime. It also called for the approximation of criminal law and procedures on money laundering, adding that the scope of criminal activities which constitute principal offences for money laundering should be uniform and sufficiently broad in all Member States. 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. The following are the main elements of the draft Council Framework Decision: - 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 Article 2 (insofar as the offence is punishable by deprivation of liberty or a detention order for a maximum of more than one year) and Article 6 (insofar as 'serious' offences are concerned i.e. those that 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 6 months) of the 1990 Convention. - Penalties: Member States must ensure that 'serious' offences referred to in Article 6(1)(a) and (b) of the 1990 Convention are punishable by deprivation of liberty for a maximum of not less than five years. - Value confiscation: Member States have to ensure that their 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. - Identification and tracing of suspected proceeds: at least in investigations relating to 'serious' offences 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 of the 1990 Convention may not be invoked between EU Member States. - Processing of requests for mutual assistance: requests from other Member States should be processed with the same priority that is given to such measures in domestic proceedings. - Prevention of the dissipation of assets: the risk of assets being dissipated must be minimised by Member States and they must 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. - Articles 1, 3, 5(1) and 8(2) of Joint Action 98/699/JHA are repealed.