

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

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PURPOSE : to present the Initiative of the Kingdom of Denmark with a view to the adoption of a Council Framework Decision on Confiscation of Crime-related Proceeds, Instrumentalities and Property.

CONTENT : the main motive for cross-border organised crime is financial gain. In order to be effective, therefore, any attempt to prevent and combat such crime must focus on tracing, freezing, seizing and confiscating the proceeds from crime. However, this is made difficult inter alia as a result of differences between Member States' legislation in this area. Under the Framework Decision 2001/500/JHA on money laundering, search, seizure and confiscation of the proceeds from crime, the Council established the principle of mutual recognition of national measures governing the confiscation of proceeds from crime. Up until now, the existing instruments in this area have not to a sufficient extent achieved effective cross-border cooperation with regard to confiscation as there are still a number of Member States which are unable to confiscate the proceeds from all offences punishable by deprivation of liberty for more than one year. The aim of this Framework Decision is to ensure that all Member States have effective rules governing the confiscation of proceeds from crime, inter alia in relation to the onus of proof regarding the source of assets held by a person convicted of an offence related to organised crime. This Framework Decision is linked to the Framework Decision on the mutual recognition within the European Union of decisions concerning the confiscation of proceeds from crime and asset-sharing. Member States shall adopt the necessary measures to enable them to confiscate, either wholly or in part, instrumentalities and proceeds from criminal offences punishable by deprivation of liberty for more than 1 year, or property the value of which corresponds to such proceeds. Furthermore, Member States shall adopt the necessary measures to enable them to confiscate, either wholly or in part, property belonging to a person convicted of a criminal act, including property not resulting from the criminal act of which the person in question is convicted, if: a) the act is of such a nature that it can generate substantial proceeds, and b) the act is punishable by at least a maximum sentence of up to 6 years in prison. Member States shall also adopt the necessary measures to enable them to confiscate, either wholly or in part, property acquired by the spouse or cohabitee of the person concerned. Member States may disregard cases where the property was acquired more than 3 years prior to the commission of the offence which forms the basis for confiscation, or cases where the marriage or cohabitation did not exist at the time of acquisition.