

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

2002/0816(CNS) - 18/07/2002 - Legislative proposal

PURPOSE : Danish Initiative regarding a Framework Decision on the execution of confiscation orders.

CONTENT : Following the conclusions of the Tampere European council of October 1999, steps must be taken to root out money laundering and organised crime. The purpose of this Framework Decision is to facilitate cooperation between Member States as regards the recognition and execution of orders to confiscate proceeds so as to oblige a Member State to recognise and execute in its territory confiscation orders issued by the judicial authorities of another Member State. The draft Framework Decision deals with the following: - determination of the competent authorities. Each Member State must inform the General Secretariat of the EU Council of the competent authorities - that is, the issuing judicial authority and the executing judicial authority - under its law - transmission of confiscation orders. The latter, together with a certificate in standard form must be transmitted to a Member State in which the person against whom the order has been issued has property, or is normally resident. - the draft gives a list of offences. If these are punishable in the issuing state by a custodial sentence of a minimum of three years, they will give rise to execution on the basis of a confiscation order without verification of the double criminality of the act. Such offences include acts of terrorism and participation in a criminal organisation. - recognition and execution of orders. The competent authorities in the executing state must execute an order which has been transmitted in accordance with this Decision without further formality, unless the latter invokes one of the grounds for non-recognition or non-execution listed in this Decision. Such grounds include immunity or privilege, and third party rights. Legal remedies- Member States must ensure that any interested party have remedies with suspensive effect against a confiscation order in order to preserve their legitimate interests. there is a list of permissible grounds for the postponement of execution. The draft Framework decision goes on to cover circumstances such as multiple requests from two or more Member States, and the law governing execution, as well as the following: - amnesty and pardon - termination of execution - sharing of assets - information on the result of the execution - costs - implementation.