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

2000/0814(CNS) - 21/02/2006 - Follow-up document

This is the second Commission report based on Article 6 of the Council Framework Decision of 26 June 2001 on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime.

This second evaluation follows on from the Commission Report of 5 April 2004 established on the basis of Article 6 of the Council Framework Decision of 26 June 2001 on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime. The Council, at its meeting on 25 and 26 October 2004, took note of the Commission report and called on the Member States which had not yet fully complied with the Framework Decision to do so as soon as possible and provide information on the progress achieved. It decided that there should be a second evaluation report and asked the new Member States, which had not, of course, been covered by the first evaluation, to transmit the relevant information relating to the transposal of the instrument into their respective legal orders.

This report substantially covers the Member States not covered by the first one. The report presents a consolidated view of the situation in those which were covered by the first report but have provided explanations since then. Only the answers that reached the Commission before 30 July 2005 have been taken into account.

The Report concludes that the situation concerning the transposal of the specific provisions is now as follows:

Article 1 : Reservations in respect of the 1990 Convention: Article 1(a): Greece, Luxembourg and Malta will probably have to reformulate their reservations in respect of Article 2 of the 1990 Convention. Article 1(b): Austria, Greece and Luxembourg still do not seem to meet the necessary conditions. Among the new Member States, the reservations entered by Malta and Hungary do not seem to comply.

Article 2 : Penalties: all the Member States which answered comply with this Article. But three remarks could be made:

- The Czech Republic could amend a provision of a bill on the matter to make it fully compliant;
- Hungary might have to reformulate the provision automatically exempting all those who reveal money-laundering activities and its definition of the offence of money laundering;
- The maximum penalty complying with Article 2 is provided for only where the court convicts for the aggravated money-laundering offence (Austria, Denmark, Finland, Sweden, Czech Republic, Slovakia).

Article 3 : Value confiscation: value confiscation seems to be available to varying degrees, but at least as an alternative measure (even if it is sometimes confined to specific cases or to certain types of offences or of assets), in the domestic procedures of most of the Member States. Latvia is the only exception and does not seem to have such a procedure. In Austria the confiscation procedure applies only above a threshold

that exceeds the provisions of Article 3. Regarding foreign requests, there is little additional information to supplement the analysis from the first evaluation. The new Member States that have provided information generally stated that they complied with relevant international instruments.

Article 4: Processing of requests for mutual assistance: the Commission still considers that it has not received sufficient information to consider that this provision has been specifically transposed. The Commission considers that the implementation of this article will be facilitated if on-going projects concerning the mutual recognition of confiscation decisions are brought to a conclusion.

Article 7: Territorial application: this Article provides that the Framework Decision is to enter into force in Gibraltar as soon as the 1990 Council of Europe Convention applies there. The UK pointed out that this condition is not met and that no measures are in preparation to fill the gap.