Basic information

2000/0814(CNS) CNS - Consultation procedure Decision	Procedure completed
Combating crime: money laundering, confiscation of instrumentalities and proceeds. Framework Decision. Initiative France Amended by 2012/0036(COD) See also 2016/0414(COD) **Subject** 7.30.30.08 Capital outflow, money laundering	

Key players

European Parliament	**Committee responsible**	**Rapporteur**	**Appointed**
	LIBE Citizens' Freedoms and Rights, Justice and Home Affairs	MARINHO Luís (PSE)	29/08/2000

Council of the European Union	**Council configuration**	**Meetings**	**Date**
	Research	2363	2001-06-26

Key events

Date	Event	Reference	Summary
20/07/2000	Legislative proposal published	10232/2000	Summary
04/09/2000	Committee referral announced in Parliament		
24/10/2000	Vote in committee		Summary
24/10/2000	Committee report tabled for plenary, 1st reading/single reading	A5-0313/2000	
13/11/2000	Debate in Parliament		
14/11/2000	Decision by Parliament	T5-0496/2000	Summary
26/06/2001	Act adopted by Council after consultation of Parliament		
26/06/2001	End of procedure in Parliament		
05/07/2001	Final act published in Official Journal		

Technical information

Procedure reference	2000/0814(CNS)
Procedure type	CNS - Consultation procedure

Procedure subtype	Legislation
Legislative instrument	Decision
Amendments and repeals	Amended by 2012/0036(COD) See also 2016/0414(COD)
Legal basis	Treaty on European Union (after Amsterdam) M 034-p2b Treaty on European Union (after Amsterdam) M 031-
Stage reached in procedure	Procedure completed
Committee dossier	LIBE/5/13534

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee report tabled for plenary, 1st reading/single reading		A5-0313/2000 OJ C 223 08.08.2001, p. 0005	24/10/2000	
Text adopted by Parliament, 1st reading/single reading		T5-0496/2000 OJ C 223 08.08.2001, p. 0020-0084	14/11/2000	Summary

Council of the EU

Document type	Reference	Date	Summary
Document attached to the procedure	09903/2000	30/06/2000	Summary
Legislative proposal	10232/2000 OJ C 243 24.08.2000, p. 0009	20/07/2000	Summary

European Commission

Document type	Reference	Date	Summary
Follow-up document	COM(2004)0230	05/04/2004	Summary
Follow-up document	COM(2006)0072	21/02/2006	Summary

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
EU	Implementing legislative act	32002H0515 OJ C 114 15.05.2002, p. 0001	25/04/2002	Summary

Additional information

Source	Document	Date
European Commission	EUR-Lex	

Final act

Justice and Home Affairs act 2001/0500
OJ L 182 05.07.2001, p. 0001 Summary

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

2000/0814(CNS) - 30/06/2000 - Document attached to the procedure

This document relates to the 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. This document constitutes the reformatting of the initial initiative into a framework decision and is confined to those provisions of the 1998 Joint Action that can be incorporated into a binding agreement. The framework decision consequently omits some of the Joint Action's provisions, which will continue to apply. The text has been changed in two respects: - its scope has been reduced to serious offences as defined jointly by the 1990 Convention and the present Framework Agreement; - this restriction of scope is offset by a toughening of the obligations arising from it: in the first indent by the use of the expression "shall take the necessary steps"; in the second by making it impossible to invoke, between Member States, some of the optional grounds for refusal listed in Article 18 of the 1990 Convention. Specifically, the grounds concerned are those allowing the requested State: 1) to refuse a coercive action sought for tracing purposes or a provisional measure with a view to a confiscation if such a measure could not be applied under its domestic law in a similar case (Article 18(2)); 2) to refuse a confiscation decision if its legislation does not provide for confiscation for the type of offence to which the request relates (Article 18(4)(a)); 3) to refuse the measure sought or any other measures having similar effects if they would not be permitted under the law of the requesting Party (first of the grounds in Article 18(3)).

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

2000/0814(CNS) - 25/04/2002 - Implementing legislative act

This document sets out the Council's recommendations on improving investigation methods in the fight against organised crime linked to organised drug trafficking: simultaneous investigations into drug trafficking by criminal organisations and their finances/assets. The Council, in particular, recommends Member States: - to apply, whenever they consider it necessary, the investigations method in the fight against crime, including crime linked to organised drug trafficking, consisting of investigating on all fronts, right from the beginning, any activities connected with illicit drug trafficking and identifying the organisation's finances and assets; - to encourage the setting up of permanent or temporary groups specialised in asset investigation, in order to promote greater efficiency in the investigation method described; - to reinforce or facilitate cooperation between the competent law enforcement, court tax authorities and persons responsible for the various public or private registers of ownership holding information on assets of any nature, by speeding up the processing of requests for information made by those authorities. (The persons responsible would be in charge of, for example, public registers, such as the Property Register, or private registers such as those of credit institutions) in each case observing the applicable national laws; - to promote the creation of joint venture investigative teams between Member States pursuant to the legal instruments of the European union by applying such methods in cases where the investigation into the criminal organisation involved in drug trafficking affects more than one Member State; - to invite Europol, in accordance with the Council Recommendation of 30 November 2000 to the Member States in respect of Europol's assistance to joint investigative teams set up by Member States, to support those teams when requested to do so; - to use the possibilities offered by CEPOL (the European Police College) in devising specific training modules on use of this special investigation technique.

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

2000/0814(CNS) - 26/06/2001 - Final act

PURPOSE : to adopt a framework decision on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds from crime. COMMUNITY MEASURE : Council Framework 2001/500/JHA on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of 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 of 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 who would enable competent authorities quickly to secure evidence and to seize assets which are easily movable. The following are the main elements of the 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 or liberty or a detenation 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 systel, 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 or in Article 6(1)(a) and (b) of the 1990 Convention, as they result from Article 1(b) of this framework Decision , are punishable by deprivation of liberty for a maximum of not less than four years; - value confiscation: Member States have to ensure that their legislation and procedures on the confiscation of the proceeds from crime also allow for, at least in cases where these proceeds cannot be seized, 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. Member States may exclude the confiscation of property the value of which corresponds to the proceeds of crime in cases on which that value would be less then EUR 4000; - processing of requests for mutual assistance: Member States shall take the necessary steps to ensure that all requests from other Member States which relate to asset identification, tracing, freezing or seizing and confiscation are processed with the same priority as is given to such measures in domestic proceedings; - repeal of existing provisions: Articles 1,3,5 (1) and 8(2) of Joint Action 98/699/JHA are hereby repealed. Lastly, Member States shall adopt the measures necessary to comply with the provisions of this framework decision by 31 December 2002. By 31 March 2003, Member States shall forward to the General Secretariat of the Council and to the Councilthe text of the provisons transposing into their national law the obligations arising from them this framework Decision and, where appropriate, the notifications made pursuant to Article 40(2) of the 1990 Convention. On the basis of this information and the written report from the Commission, the Council shall ascertain, by 31 December 2003, to what extent Member States have taken the measure necessary to comply with this framework decision. This framework Decision shall apply to Gibraltar as soon as the application of the 1990 Convention is extended to Gibraltar. ENTRY INTO FORCE : the framework Decision shall enter into force on 05/07/2001.

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 fom 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.

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.

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

2000/0814(CNS) - 05/04/2004 - Follow-up document

This report has been prepared by the European Commission in line with an obligation to do so established in the 2001 Framework Decision on "Money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime". Its main remit is to examine what implementing measures have been taken by the Member States in connection with the Framework Decision. It has the additional aim of allowing the Council to assess the extent to which the Member States have taken the necessary measures to comply with the Framework Decision. The Commission makes a point of stating that the report is based on information it received from the Member States themselves. Many of the entries were received late and many were inadequate regarding the content of the information forwarded. Austria and Portugal failed to submit any information so the resulting report does not assess the state of play in these two countries. Having evaluated in some detail the submissions sent to it by the Member States, the Commission concludes that: In the case of Article 1, the large majority of Member States (twelve) seem to have complied with it, whereas Greece, Luxembourg and probably Sweden will have to uphold or redraft their reservations to Article 2 of the Convention. Similarly, a majority of Member States seem to comply with Article 1 (b), whereas Austria,, Greece, Luxembourg and Portugal do not meet the required terms and Spain is in process of amending its national legislation to fully comply, in substance, with the Decision. In the case of Article 2, eleven Member States provided the Commission with information demonstrating that they comply with the Article. In the case of Article 3, the question of value confiscation seems to be possible to a varying extent. At the least, it is used as an alternative, domestic measure in eleven of the EU Member States. In the case of "foreign requests" it applies to at least nine of the EU Member States. Spain and Luxembourg are in the process of preparing legislation to further comply with this Article. Some of the conditions applied to the enforcement of external orders are likely to be challenged by future instruments on confiscation. In the case of Article 4, the Commission has not received enough information to consider that this provision has been specifically transposed. Lastly, in the case of Article 7, the Commission has no evidence to assume that this provision was transposed by the Member States. To conclude, the Commission calls for a rapid and speedy implementation of all of the provisions outlined in the Framework Decision and to inform the Commission, no later than 01/09/04, of efforts to do so.

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

2000/0814(CNS) - 14/11/2000 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted the resolution, drafted by Mr Luis MARINHO (PES, P), supporting a French initiative designed to strengthen cooperation in the fight against money laundering. The resolution takes the form of a 'third' pillar intergovernmental agreement and introduces legal measures to confiscate the proceeds of crime as foreseen in the 1990 European Convention. Seventeen amendments approved are in general designed to improve procedures for cooperation. (Refer to the previous document, the decisions of the committee responsible, for a guideline of the amendments tabled by the committee). In addition, the Member States shall adopt the measures necessary to comply with the provisions of this Framework Decision by 31.12.2002. They shall forward to the General Secretariat of the Council and to the Commission, by 01.03.2002 at the latest, the text of the provisions transposing into their national law the obligations arising from them from this Framework Directive.