

Procedure file

Basic information		
CNS - Consultation procedure Decision	2002/0818(CNS)	Procedure completed
Combating organised crime: confiscation of crime-related proceeds, instrumentalities and property. Framework Decision. Initiative Denmark Amended by 2012/0036(COD)		
Subject 7.30.30 Action to combat crime 7.40.04 Judicial cooperation in criminal matters		

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	LIBE Citizens' Freedoms and Rights, Justice and Home Affairs	GUE/NGL DI LELLO FINUOLI Giuseppe	11/09/2002
Council of the European Union	Council configuration	Meeting	Date
	Justice and Home Affairs (JHA)	2642	24/02/2005
	Justice and Home Affairs (JHA)	2514	05/06/2003
	Justice and Home Affairs (JHA)	2477	19/12/2002
European Commission	Justice and Home Affairs (JHA)	2455	14/10/2002
	Commission DG Justice and Consumers	Commissioner	

Key events			
15/07/2002	Legislative proposal published	10697/2002	Summary
02/09/2002	Committee referral announced in Parliament		
14/10/2002	Debate in Council	2455	Summary
05/11/2002	Vote in committee		Summary
04/11/2002	Committee report tabled for plenary, 1st reading/single reading	A5-0383/2002	
20/11/2002	Decision by Parliament	T5-0552/2002	Summary
05/06/2003	Debate in Council	2514	
24/02/2005	Act adopted by Council after consultation of Parliament		
24/02/2005	End of procedure in Parliament		
15/03/2005	Final act published in Official Journal		

Technical information	
Procedure reference	2002/0818(CNS)

Procedure type	CNS - Consultation procedure
Procedure subtype	Legislation
Legislative instrument	Decision
	Amended by 2012/0036(COD)
Legal basis	Treaty on the European Union (after Amsterdam) M 039-p1
Stage reached in procedure	Procedure completed

Documentation gateway

Document attached to the procedure	09956/2002	14/06/2002	CSL	Summary
Legislative proposal	10697/2002 OJ C 184 02.08.2002, p. 0003-0005	16/07/2002	CSL	Summary
Committee report tabled for plenary, 1st reading/single reading	A5-0383/2002	05/11/2002	EP	
Text adopted by Parliament, 1st reading/single reading	T5-0552/2002 OJ C 025 29.01.2004, p. 0027-0203 E	20/11/2002	EP	Summary
Follow-up document	COM(2007)0805	17/12/2007	EC	Summary

Additional information

European Commission	EUR-Lex
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Final act

Justice and Home Affairs act 2005/212 OJ L 068 15.03.2005, p. 0049 Summary

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

This documents comprises of a note transmitted by the Danish Permanent Representative to the Secretary-general of the Council. It consists of the draft Danish initiative relating to the confiscation of crime-related proceeds, instrumentalities and properties and which aims to complete the measure provided for by the framework decision of 26 June 2001 on money laundering (2001/500/JHA). In this document, the Danish delegation describes the general objective of the initiative, the definition of the proceeds and properties to be confiscated and the new extended powers of confiscation suggested by the draft Danish framework decision. Lastly, the text requires Member States to improve the rules concerning the origin of the confiscated goods.?

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

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.?

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

The Council had an in-depth discussion on a draft Framework Decision on combating corruption in the private sector. Following the debate, the Council decided to instruct the Permanent Representatives Committee to further examine the draft Framework Decision.?

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

The European Parliament adopted a resolution based on the draft by Giuseppe DI LELLO FINUOLI (EUL/NGL, Italy) making some amendments to the Danish initiative. (Please refer to the document dated 5/11/02.)?

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

PURPOSE: Ensure that there are effective rules throughout the EU governing the confiscation of proceeds from crime.

LEGISLATIVE ACT: Council Framework Decision 2005/212/JHA.

CONTENT: The aim of this Framework Decision is to ensure that all Member States have effective rules governing the confiscation of proceeds from crime, particularly in relation to the onus of proof regarding the source of assets held by a person convicted of an offence related to organised crime.

In accordance with this Framework Decision, each Member State will take the necessary measures to enable it to confiscate, either wholly or in part, instrumentalities and proceeds from criminal offences punishable by deprivation of liberty for more than one year, or property the value of which corresponds to such proceeds.

In relation to tax offences, Member States may use procedures other than criminal procedures to deprive the perpetrator of the proceeds of the offence.

This Framework Decision does not modify the obligation to respect fundamental rights and principles, including the presumption of innocence, set out in Article 6 of the Treaty on European Union.

DATE OF IMPLEMENTATION: 15/03/2007.

ENTRY INTO FORCE: 15/03/2005.

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

Article 6 of the Council Framework Decision on the confiscation of crime-related proceeds, instrumentalities and property requires the Commission to produce a written report on the measures taken by the Member States to comply with the Framework Decision. Council Framework Decisions are binding upon the Member States as to the result to be achieved but leave to the national authorities the choice of form and methods. They do not have direct effect. As the Commission has no powers under the third pillar to launch infringement proceedings against a Member State, the nature and purpose of this report is merely to provide a factual assessment of the transposition measures adopted.

The report focuses on an assessment of Articles 2 and 3, which form the core part of the Framework Decision, and the main obligations in the light of the Decision's aims. At the time of writing, 16 Member States (BE, BG, CZ, DE, DK, EE, FI, FR, HU, IE, LT, MT, NL, PL, RO, SE) had submitted their legislation. Ten of them (BE, CZ, DE, DK, EE, FI, FR, HU, NL, PL) had transposed the Framework Decision almost wholesale, with the exception in many cases of Article 1 and in some cases of certain provisions that are minor compared with the general thrust of the Framework Decision, while six (BG, IE, LT, MT, RO, SE) had transposed it in part. Five Member States (EL, IT, LV, LU, PT) stated that they were in the process of preparing the relevant legislation. Six Member States (AT, CY, ES, SK, SI, UK) have not yet sent their national measures to the Commission.

Thus the main findings of the report are that, to date, only 16 Member States have sent the text of provisions transposing the Framework Decision into national law. The Commission is concerned that so little progress has been made. It, therefore, reminds the Member States of the importance that they themselves attach to combating organised crime by means of depriving it of its financial resources and gain. The Commission would also point out that this importance is reflected in the Council of Europe Conventions of 1990 and 2005 on laundering,

search, seizure and confiscation of the proceeds from crime, and in the United Nations Convention of 2000 against Transnational Organised Crime. To combat organised crime effectively within the European Union, it is vital that solid and complete national provisions are adopted.

The Commission invites the Member States to consider this report and to use this opportunity to send it, and the General Secretariat of the Council, any further relevant information in order to comply with their obligations under Article 6 of the Framework Decision. The Commission would encourage those Member States which stated that they were in the process of preparing the necessary legislation to adopt it as quickly as possible and to send the text adopted to the General Secretariat of the Council and to the Commission. Lastly, the Commission regrets that six Member States have still not provided any information and invites them to send all information regarding transposition of the Framework Decision into their national law as quickly as possible. The Commission intends to adopt a Communication on the proceeds of crime at the end of 2008, in which it will analyse measures for the confiscation and recovery of property obtained through criminal activity and will examine how to strengthen cooperation between police and judicial authorities so as to deprive criminals of their illicit gain.