Procedure file

Basic information

CNS - Consultation procedure Decision	2002/0816(CNS)	Procedure completed
Combating organised crime, judicial cooperation: application of the principle of mutual recognition to confiscation orders. Framework Decision. Initiative Denmark Amended by 2008/0803(CNS) See also 2016/0412(COD) Amended by 2021/0395(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
	Former committee responsible		
	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)	2752	05/10/2006
	Justice and Home Affairs (JHA)	2514	05/06/2003
	Justice and Home Affairs (JHA)	2477	19/12/2002
European Commission	Commission DG	Commissioner	
	Justice and Consumers		

Key events

18/07/2002	Legislative proposal published	10701/2002	Summary
02/09/2002	Committee referral announced in Parliament		
05/11/2002	Vote in committee		Summary
05/11/2002	Committee report tabled for plenary, 1st reading/single reading	A5-0383/2002	
	Debate in Parliament		

18/11/2002			
20/11/2002	Decision by Parliament	T5-0553/2002	Summary
19/12/2002	Debate in Council	2477	
05/06/2003	Debate in Council	2514	
05/10/2006	Act adopted by Council after consultation of Parliament		
05/10/2006	End of procedure in Parliament		
24/11/2006	Final act published in Official Journal		

Technical information

Procedure reference	2002/0816(CNS)
Procedure type	CNS - Consultation procedure
Procedure subtype	Legislation
Legislative instrument	Decision
	Amended by 2008/0803(CNS) See also 2016/0412(COD) Amended by 2021/0395(COD)
Legal basis	Treaty on the European Union (after Amsterdam) M 039-p1
Stage reached in procedure	Procedure completed
Committee dossier	LIBE/5/16593; LIBE/5/16592

Documentation gateway

Document attached to the procedure		09955/2002	14/06/2002	CSL	Summary
Legislative proposal		10701/2002 OJ C 184 02.08.2002, p. 0008-0014	18/07/2002	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		T5-0553/2002 OJ C 025 29.01.2004, p. 0027-0204 E	20/11/2002	EP	Summary
Follow-up document		COM(2010)0428	23/08/2010	EC	Summary

Additional information

European Commission	EUR-Lex

Final act

Justice and Home Affairs act 2006/783
OJ L 328 24.11.2006, p. 0059-0078 Summary

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

This document consists of a cover note from P.Skytte Christofferson, Ambassador, Permanent Representative, to Javier SOLANA, High Representative of the EU. It encloses the Danish Initiative concerning a draft Framework Decision on the execution of confiscation orders.?

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

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. ?

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

The committee adopted the report by Giuseppe DI LELLO FINUOLI (EUL/NGL, I) broadly endorsing the proposal, subject to a number of amendments under the consultation procedure: - confiscation should be in proportion to the offence committed; - the offence should be related to organised crime and must actually have generated substantial proceeds; - as regards extended powers of confiscation, Member States should only be able to confiscate property owned by the convicted person's spouse or cohabitee where it can be proved that the property does in fact belong to the convicted person and that the spouse or cohabitee only has fictitious access or title to it; - the burden of proof in respect of the unlawful origin of the property should lie with the prosecution and not with the defence.?

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

The European Parliament adopted a resolution drafted by Giuseppe DI LELLO FINUOLI (EUL/NGL, Italy) substantially approving the proposal. (Please refer to the document dated 5/11/02.)?

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

PURPOSE : to facilitate cooperation between Member States as regards the recognition and execution of confiscation orders.

LEGISLATIVE ACT : Council Framework Decision 2006/783/JHA on the application of the principle of mutual recognition to confiscation orders.

CONTENT : the Council unanimously adopted this Framework Decision, which aims to facilitate cooperation between Member States as regards the mutual recognition and execution of orders to confiscate property. It will oblige a Member State to recognise and execute in its territory confiscation orders issued by a court competent in criminal matters of another Member State. The Framework Decision will not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty on European Union, and any obligations incumbent on judicial authorities in this respect shall remain unaffected.

The general principle is that the competent authorities in the executing State will, without further formality, recognise a confiscation order which has been transmitted in accordance with rules laid down in the Framework Decision and will take all the necessary measures for its execution.

The Framework Decision contains a list of offences for which, if they give rise to a confiscation

order and are punishable in the issuing State by a custodial sentence of a maximum of at least 3 years, execution of the confiscation order will take place without verification of the double criminality of the acts in the executing Member State.

These offences are as follows: participation in a criminal organisation; terrorism; trafficking in human beings; sexual exploitation of children and child pornography; illicit trafficking in narcotic drugs and psychotropicsubstances; illicit trafficking in weapons, munitions and explosives; corruption; fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July

1995 on the protection of the European Communities' financial interests; laundering of the proceeds of crime; counterfeiting currency, including of the euro; computer-related crime; environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties; facilitation of unauthorised entry and residence; murder, grievous bodily injury; illicit trade in human organs and tissue; kidnapping, illegal restraint and hostage-taking; racism and xenophobia; organised or armed robbery; illicit trafficking in cultural goods, including antiques and works of art; swindling; racketeering and extortion; counterfeiting and piracy of products; forgery of administrative documents and trafficking therein; forgery of means of payment; illicit trafficking in hormonal substances and other growth promoters; illicit trafficking in nuclear or radioactive materials; trafficking in stolen vehicles; rape; arson; crimes within the jurisdiction of the International Criminal Court; unlawful seizure of aircraft/ships; sabotage.

The Council may decide to add other categories of offences to the list at any time, acting unanimously after consultation of the European Parliament.

The restitution of property to its rightful owner is not dealt with in this legislation and neither does the text prejudice the end to which the Member States apply the amounts obtained as a consequence of its application.

The practical operation of this Framework Decision presupposes close liaison between the competent national authorities involved, in particular in cases of simultaneous execution of a confiscation order in more than one Member State .

A confiscation order, together with the certificate provided for in the Framework Decision, the standard form for which is given in the Annex, may, in the case of a confiscation order concerning an amount of money, be transmitted to the competent authority of a Member State in which the competent authority of the issuing State has reasonable grounds to believe that the person against whom the confiscation order has been issued has property or income. There are similar rules for specific items of property.

The execution of the confiscation order shall be governed by the law of the executing State and its authorities alone shall be competent to decide on the procedures for execution and to determine all the measures relating to it. The executing State may not impose measures as an alternative to the confiscation order, including custodial sanctions or any other measure limiting a person's freedom, as a result of a transmission, unless the issuing State has given its consent.

Amnesty and pardon may be granted by the issuing State and also by the executing State.. Only the issuing State may determine any application for review of the confiscation order.

Money which has been obtained from the execution of the confiscation order shall be disposed of by the executing State as follows: a) if the amount obtained from the execution of the confiscation order is below EUR 10 000, or the equivalent to that amount, the amount shall accrue to the executing State; (b) in all other cases, 50 % of the amount which has been obtained from the execution of the confiscation order shall be transferred by the executing State to the issuing State.

It should be noted that this Framework Decision is related to that on the confiscation of crime-related proceeds, instrumentalities and property (CNS/2002/0818). It is also linked to Council Framework Decision 2003/577/JHA on the execution in the EU of orders freezing property or evidence (CNS/2001/0803) and that on money laundering, confiscation of instrumentalities and proceeds (CNS/2000/0814).

ENTRY INTO FORCE : 24/11/2006.

DATE OF APPLICATION : 24/11/2008.

- Member States shall communicate to the General Secretariat of the Council and to the Commission the text of the provisions transposing into their national law the obligations resulting from this Framework Decision. On the basis of a report established on the basis of this information by the Commission, the Council shall, by 24 November 2009, assess the extent to which Member States have taken the necessary measures to comply with the Framework Decision.

- Member States, acting as executing States, shall inform the Council and the Commission, at the beginning of the calendar year, of the number of cases in which Article 17(b) has been applied (decision not to recognise the confiscation order) and a summary of reasons for this. By 24 November 2013, the Commission shall establish a report on the basis of the information received, accompanied by any initiatives it may deem appropriate.

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

This report from the Commission is based on Article 22 of the Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders.

To recall, this Framework Decision applies the principle of mutual recognition to confiscation orders issued by a court competent in criminal matters for the purpose of facilitating enforcement of such confiscation orders in a Member State other than the one in which the confiscation order was issued. The Framework Decision applies to all offences in relation to which confiscation orders can be issued. Dual criminality checks were abolished in relation to 32 categories of offences listed in the Framework Decision.

Main conclusions: the report states that the degree of implementation of Council Framework Decision 2006/783/JHA of 8 October 2006 in the national legislation of the Member States of the European Union is clearly not satisfactory. Only 13 Member States implemented the FD and notified the Commission (at least informally) by the end of February 2010, fifteen months after the deadline set by the Framework Decision.

The national implementing provisions received from the thirteen Member States are generally satisfactory and can be considered to be in line with the Framework Decision, especially regarding the most important issues such as the abolition of dual criminality checks and the recognition of decisions without further formality. Unfortunately, the analysis of grounds for refusal of recognition shows that almost all Member States included in their national legislation several additional grounds. This practice is not in line with the Framework Decision.

The Commission invites all Member States to consider this Report and to take the opportunity to provide all further relevant information to the Commission and to the Council Secretariat, in order to fulfil their obligations under Article 22 of the Framework Decision. In addition, the Commission encourages those Member State that have signalled that they are preparing relevant legislation to enact and notify these national measures as soon as possible.

The partial and incomplete transposition of this instrument by Member States hampers substantively the full and effective application of the principle of mutual recognition in the European Union. It limits the role of judicial authorities in combating financial crime by depriving criminals of the financial benefit they obtain from criminal conduct. The Commission urges all those Member States which have not done so yet to take swift measures to implement this Framework Decision to the fullest extent. Furthermore, it invites those which have transposed it incorrectly, e.g. by including additional grounds for refusal, to review and align their national implementation legislation with the provisions of the Framework Decision. On the basis of the reactions to this report, the Commission will reflect on the need to revise this Framework Decision under the rules of the Treaty of Lisbon.