

2001/500/JHA: Council Framework Decision of 26 June 2001 on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime

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Council Framework Decision

of 26 June 2001

on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime

(2001/500/JHA)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 31(a), (c) and (e) and Article 34(2)(b) thereof,

Having regard to the initiative of the French Republic,

Having regard to the opinion of the European Parliament,

Whereas:

(1) On 3 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(1).

(2) Account should be taken of the Presidency conclusions of the European Council meeting in Tampere on 15 and 16 October 1999, and of the Presidency conclusions of the European Council meeting in Vienna on 11 and 12 December 1998.

(3) The European Council, noting that serious forms of crime increasingly have tax and duty aspects, calls on Member States to provide full mutual legal assistance in the investigation and prosecution of this type of crime.

(4) The European Council calls for the approximation of criminal law and procedures on money laundering (in particular, confiscating funds), adding that the scope of criminal activities which constitute principal offences for money laundering should be uniform and sufficiently broad in all Member States.

(5) The European Council in Tampere considered that, with regard to national criminal law, efforts to agree on common definitions, incriminations and sanctions should be focused in the first instance on a limited number of sectors of particular relevance, such as financial crime.

(6) The European Council in Tampere noted that money laundering is at the very heart of organised crime and should be rooted out wherever it occurs. The European Council is determined to ensure that concrete steps are taken to trace, freeze, seize and confiscate the proceeds of crime.

(7) Member States have subscribed to the principles of the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, hereinafter referred to as "the 1990 Convention",

HAS ADOPTED THIS FRAMEWORK DECISION:

Article 1

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 the following articles of the 1990 Convention:

(a) Article 2, in so far as the offence is punishable by deprivation of liberty or a detention order for a maximum of more than one year.

However, Member States may uphold reservations on Article 2 of the 1990 Convention in respect of the confiscation of the proceeds from tax offences for the sole purpose of their being able to confiscate such proceeds, both nationally and through international cooperation, under national, Community and international tax-debt recovery legislation;

(b) Article 6, in so far as serious offences are concerned. Such offences shall in any event include offences which 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 six months.

Article 2

Penalties

Each Member State shall take the necessary steps consistent with its system of penalties to ensure that the offences referred to in Article 6(1)(a) and (b) of the 1990 Convention, as they result from the Article 1(b) of this framework Decision, are punishable by deprivation of liberty for a maximum of not less than 4 years.

Article 3

Value confiscation

Each Member State shall take the necessary steps to ensure that its legislation and procedures on the confiscation of the proceeds of crime also allow, 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. However, Member States may exclude the confiscation of property the value of which corresponds to the proceeds of crime in cases in which that value would be less than EUR 4000.

The words "property", "proceeds" and "confiscation" shall have the same meaning as in Article 1 of the 1990 Convention.

Article 4

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.

Article 5

Repeal of existing provisions

Articles 1, 3, 5(1) and 8(2) of Joint Action 98/699/JHA are hereby repealed.

Article 6

Implementation

1. Member States shall adopt the measures necessary to comply with the provisions of this framework Decision by 31 December 2002.

2. By 1 March 2003, Member States shall forward to the General Secretariat of the Council and to the Commission the text of the provisions transposing into their national law the obligations arising for them from 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 a written report from the Commission, the Council shall ascertain, by 31 December 2003, to what extent Member States have taken the measures necessary to comply with this framework Decision.

Article 7

Territorial application

This framework Decision shall apply to Gibraltar as soon as application of the 1990 Convention is extended to Gibraltar.

Article 8

Entry into force

This framework Decision shall enter into force on the day of its publication in the Official Journal.

Done at Luxembourg, 26 June 2001.

For the Council
The President
T. Östros

(1) OJ L 333, 9.12.1998, p. 1.

