

EN

EN

EN



EUROPEAN COMMISSION

Brussels, 23.8.2010
COM(2010) 428 final

**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND
THE COUNCIL**

**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**

REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

**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**

1. INTRODUCTION

1.1. Background

Framework Decision 2006/783/JHA 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.

1.2. Notifications sent by Member States

By the end of February 2010, the Commission had received notifications on the national laws transposing the provisions of the Framework Decision from the following 13 Member States: **AT, CZ, DE, DK, FI, IE, HU, LV, NL, PL, PT, RO** and **SI**. **IE** did not attach the implementation law to its notification. **HU** and **DE** sent only an unofficial notification.

Seven Member States (**BE, CY, EL, ES, FR, IT** and **LT**) informed the Commission of the process of preparing the relevant legislation at national level. However, none of these Member States adopted the legislation or notified the Commission before the end of February 2010.

Most Member States that sent a notification to the Commission had transposed the Framework Decision correctly, with the exception of Article 8 on the grounds for refusal. Most Member States included additional grounds for refusal not provided for by the Framework Decision. This significantly limits the scope of the application of the Framework Decision and is not in compliance with it. A few Member States only partially transposed the Framework Decision.

No notification or information on the process of transposition has been received from the following 7 Member States: **BG, EE, LU, MT, SE, SK** and **UK**.

1.3. Method and evaluation criteria

Article 22 of the Framework Decision provides for the establishment of a Commission written report on the measures taken by Member States to comply with this instrument by 24 November 2008. The report was to be established by the Commission in time for the Council to assess, by 24 November 2009, the extent to which Member States had taken the necessary measures to comply with the Framework Decision. The delay in preparing this Report results from the low number of notifications (only two) received at the time of the original deadline set by the Framework Decision.

By their nature, framework decisions are binding upon Member States as to the result to be achieved, but leave to the national authorities the choice of the form and method of implementation. Whatever the form chosen, the principles of clarity, legal certainty and effectiveness must be respected. Framework decisions do not entail direct effect. However the principle of conforming interpretation is binding in relation to framework decisions adopted under Title VI of the Treaty on European Union¹.

2. EVALUATION

General aspects of implementation

Each Member State chose a different method for transposing the Framework Decision into its national legislation.

AT transposed the Framework Decision into the Federal Law on judicial cooperation in criminal matters with the Member States of the EU. This law also contains transposition of other Framework Decisions on cooperation in criminal matters. The transposition contains the most important elements of the Framework Decision, but there are some omissions.

CZ made modifications to the Code of Criminal Procedure. The transposition is very thorough and includes all important provisions of the Framework Decision.

DE implemented the Framework Decision by amending and supplementing the Federal Law on International Legal Assistance in Criminal Matters. In the absence of a consolidated version of amended provisions, it is sometimes difficult to appreciate the completeness and correctness of the implementation. Some of the essential principles of the Framework Decision (such as the principle of direct contact) do not seem to have been properly transposed.

DK – Danish implementation law entered into force on 1 January 2005, i.e. almost two years before the Framework Decision itself was adopted by the Council. Danish law provides for the most important elements of the recognition of confiscation orders, but omits some other, less important, elements.

FI –Finland's implementing law is very brief. A specificity of this law is that it includes a general provision in its Section 1, which stipulates that provisions of a legislative nature in the Framework Decision shall be observed as law, unless the implementation law provides otherwise. Such a provision can lead to a lack of clarity and legal certainty among practitioners as they must be well acquainted with the Framework Decision itself and apply it directly. The FI transposition law focuses only on few issues such as appeal against the decision on the recognition of the confiscation order. As regards most other provisions, the implementing legislation refers to the general provision. Therefore it is somewhat difficult to evaluate the degree of transposition. Taking into account the general provision, FI transposition can be considered formally satisfactory. However, for the sake of clarity of this report, where the transposition law does not include specific provisions on certain elements, this report states that FI did not transpose those elements.

¹ Judgment of the European Court of Justice, 16 June 2005, Case C-105/03, *Pupino* (), OJ L 292, 15.11.2006, p. 2

IE did not attach the transposing legislation to the notification. Transposition was in the Criminal Justice Mutual Assistance Act in 2008. In most parts the text of the transposition law does not correspond to the Framework Decision, and numerous important provisions and basic principles of mutual recognition have been omitted. The law does not include e.g. the principles of direct contact and recognition without further formality, abolition of dual criminality check for 32 offences, grounds for refusal, grounds for postponement or right to legal remedies. However, it includes other issues not established by the Framework Decision such as interest on sums unpaid or procedures for realisation of property or impossibility of default imprisonment.

HU implemented the Framework Decision by an Act on cooperation in criminal matters with the Member States of the European Union. The implementation is satisfactory.

LV made amendments to the Latvian Criminal Procedure Law. The LV transposition is only partial as it omits some elements of the Framework Decision.

NL transposed the Framework Decision by amendments to the Act of mutual recognition and execution of criminal sanctions. The transposition contains all important elements of the Framework Decision and is therefore satisfactory.

PL amended the Code of Criminal Procedure by inserting a chapter on the mutual recognition of confiscation orders. The transposition contains the most important elements.

PT adopted a special law implementing only this Framework Decision, and did not combine it with other Framework Decisions on mutual recognition. The law is very detailed, follows the structure of the Framework Decision and transposes all important elements of the Framework Decision. Transposition is therefore very satisfactory.

RO amended the Law on International Judicial Cooperation in Criminal Matters. The RO transposition is very detailed; it contains all important provisions of the Framework Decision and is therefore satisfactory.

SI transposed the Framework Decision into an Act on cooperation in criminal matters with the EU Member States. The legislation transposes all mutual recognition instruments. The general section includes general principles, such as the principle of mutual recognition, followed by individual chapters dealing with mutual recognition of different forms of decision. The section on mutual recognition of confiscation orders transposes all important provisions of the Framework Decision and is therefore good.

Article 1 – Objective

Article 1(1) establishes the overall objective of the Framework Decision. It does not need to be transposed if the context of the implementing law is sufficiently clear on the aim of the legislation.

AT, FI, NL, CZ and PT included the general objective in their national transposition law. Other MS (IE, LV, PL, RO, SI, DE, DK and HU) did not include this paragraph.

Article 1(2) provides that the Framework Decision shall not have the effect of amending the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty, and any obligations incumbent on judicial authorities in this respect shall remain unaffected.

The provision reflects an overarching obligation for all Member States and as such its transposition may be redundant. It is clearly permissible for Member States to stipulate this obligation in their implementing law.

According to most Member States this Article does not require transposition. Some MS (AT, FI) transposed this obligation as an additional ground for refusal.

Article 2 – Definitions

Article 2 defines terms such as: 'issuing State' and 'executing State', 'confiscation order', 'property', 'proceeds', instrumentalities' and 'cultural objects'. Implementation of Framework Decisions entails a certain margin of appreciation whether it is necessary to transpose all definitions into national law. However Member States must make sure that their national transposition does not compromise the aims of the Framework Decision. A complete lack of certain definitions may lead to lack of certainty, e.g. the definition of 'confiscation order' must be implemented so as to ensure that the foreign decision can be recognised irrespective of the name of the instrument in the issuing Member State, as the relevant terminology varies greatly across Member States.

AT indicated that it had transposed the definitions, but did not attach the relevant parts of the law. The relevant section of the AT law contains only a partial definition of 'confiscation order' as it omits to mention that it is a final decision given by the court. PL indicated that it had transposed the definitions, but the reference law (which was not attached to the notification) does not contain any definitions.

AT, NL, PT and RO have covered all these terms. Some Member States (IE, SI, DK, CZ and HU) have only transposed some definitions, e.g. definition of 'confiscation order'. Other Member States (LV, FI, DE and PL) did not transpose any definitions into domestic law, which can lead to uncertainty as to the scope of application of the legislative instrument.

Article 3 - Determination of the competent authorities

This Article obliges Member States to notify the General Secretariat of the Council and the Commission which national authorities are competent for the purpose of the Framework Decision. Each Member State may designate one or more central authorities responsible for the administrative transmission and reception of the decisions and for assistance to the competent authorities, if it is necessary because of the organisation of its internal system

For some Member States, the authorities competent for issuing or executing decisions are national courts (AT, CZ, IE HU, LV, PL, PT, SI and RO) or the public prosecution service territorially competent. In other Member States, the central authority is designated as issuing or executing authority. This is the case for FI (Legal Register Centre), DK (Minister of Justice) and NL (Public Prosecutor in Leeuwarden).

A central authority for the purpose of transmission of documents is designated in CZ, IE, LV, PL and SI (Ministry of Justice). RO designated the Ministry of Justice as the central authority in order to provide assistance and transmission of document in cases where direct contact is not possible. The LV transposition law designates courts as competent authorities, but also attributes a strong role to the Ministry of Justice, which determines whether any ground for refusal exists before it decides to send the request for execution of the confiscation order to the court. IE also attributes a strong role to the central authority, which decides whether it will transmit the request for confiscation received from another Member State to the High Court or

not. Such provision is not in compliance with the principle of direct contact between competent authorities and the purely administrative role laid down by Article 3 for central authorities.

Article 4 – Transmission of confiscation orders

According to this Article, the decision in question together with a certificate may be transmitted to the competent authorities of a Member State in which the natural or legal person against whom the confiscation order concerning an amount of money has been issued has property or income. In case of a confiscation order concerning specific items of property, the order may be transmitted to the competent authority of a Member State in which the property is located. The principle of direct contact between the competent authorities is enshrined in this Article. Where the authority has no jurisdiction to recognise the confiscation order, it shall, *ex officio*, transmit the order to the competent authority.

CZ, HU, PL, PT, RO, SI and NL have transposed all elements of Article 4 in their implementing legislation. AT, DK, LV have implemented this provision only partially. FI did not transpose this Article as it transposed a general provision stipulating that the provision of a legislative nature in the Framework Decision shall be observed as law (see general aspects of transposition). IE and DE did not transpose this Article.

The principle of **direct contact** has been implemented by NL and DK, in which the central authority is at the same time the issuing and executing competent authority, which communicates directly with another State's competent authority. This principle was implemented as well by AT, CZ, PL, PT, RO and SI. AT and SI provide for direct contact between competent authorities, but the issuing court, before transmitting the request to another Member State, must give the Public Prosecutor's Office an opportunity to give its opinion and the persons concerned an opportunity to comment.

LV did not implement the principle of direct contact as the Ministry of Justice is the authority that not only transmits and receives confiscation orders, but also decides whether confiscation orders will be forwarded to the competent authorities and decides whether there is any ground of refusal. IE did not implement the principle of direct contact as the competent court sends the confiscation order to the Director of Public Prosecutions, who decides whether the confiscation order will be forwarded to the Central Authority for transmission to another Member State. DE did not write this principle into its domestic legislation.

Article 5 – Transmission of confiscation orders to one or more executing States

As a rule, a confiscation order may only be transmitted to one executing State at a time. Articles 5(2) and (3) establish exceptions to this rule in cases where different items of property are located in different executing States, where the confiscation involves action in more than one executing State or where a specific item of property is located in one of two or more specified executing States. As regards a confiscation order concerning an amount of money, it may be transmitted to more than one executing State where the property has not been frozen or where the value of the property is not likely to be sufficient for the execution.

AT, CZ, HU, NL, PL, PT, SI and RO transposed this Article entirely.

LV and DE transposed this Article partially. DK indicated that this provision did not require implementation. FI and IE did not transpose this Article.

Article 6 - Offences

This Article includes a list of offences that give rise to recognition and enforcement of decisions without verification of dual criminality if they are punishable in the issuing Member State by a custodial sentence of a maximum of at least 3 years. All other offences may be subject to such verification by the executing Member State. The list includes 32 offences also listed in other Framework Decisions. The legal qualification of offences lies exclusively with the issuing Member State.

CZ, DK, LV, PT, RO and SI implemented this provision in full compliance with the Framework Decision. These Member States included the list of offences directly into the transposition law. AT, HU, NL, DE and PL indicated that they had implemented the list of offences, but did not attach the relevant legislation to the notification. Therefore it is not possible to evaluate transposition by these countries. FI did not implement this provision, but established a general provision on "direct application" of the Framework Decision (see general comment). IE did not implement this provision and according to the current law it does not recognise any confiscation order for an offence which is not an offence in IE. This is not in compliance with Article 6 of the Framework Decision.

Article 7 - Recognition and execution

According to Article 7, a confiscation order shall be recognised without any further formality and all the necessary measures for its execution shall be taken forthwith. Implementing laws which provide for an obligation of the competent authority to convene a hearing in every case are not fully in compliance with Article 7, as a hearing usually represents a significant formality.

CZ, PL, RO, SI implemented this provision, but established an obligation to convene a public hearing in every case. Given the general nature of a formality in the executing State of this type, such a hearing is not fully in line with the Framework Decision.

FI implementation provides for the possibility to have a public hearing where some of the grounds for refusal are likely to be invoked. Such a provision appears to be in line with the Framework Decision, since the decision to convene a hearing is to be taken on a case-by-case basis, if the executing authority considers that a ground of refusal may be applicable and this requires the parties to be heard.

LV implemented this provision by establishing a written procedure for the recognition of the confiscation order.

AT provides for the possibility for the person concerned to comment on the conditions of execution insofar as he can be summoned within the Austrian territory.

DK, HU, NL and PT implemented this provision without mentioning any specific procedure leading to the recognition (i.e. whether having a public hearing is possible or compulsory or is not provided).

DE requires the competent authority (the public prosecution service territorially competent) to give the convicted person, as well as any other concerned party, an opportunity to make representations. The law also provides for the intervention of a court upon application of the competent authority, which is therefore not able to take itself all the measures necessary for the execution of the confiscation order, as prescribed by Article 7.

IE has partially transposed this provision, but the implementation law does not stipulate that recognition and execution of a confiscation order must take place without further formality.

Generally Member States have not indicated a time limit for execution.

The following Member States made a declaration according to Article 7(5) of the Framework Decision: AT, LU, PL, SI will not recognise and execute confiscation orders under circumstances where confiscation was ordered under the extended powers of confiscation under the law of the issuing State (Article 2 (d)(iv)). PL included this restriction directly in the text of the transposition law.

Article 8 – Reasons for non-recognition and non-execution

Article 8 provides for a number of grounds that can constitute a basis for refusing recognition or execution. All grounds set out in this Article are optional for the Member States, who may choose to implement them or otherwise, and may also make their application subject to more stringent conditions than those laid down in this provision². If implemented, grounds of refusal should be written into domestic law as optional for the competent authority ("The competent authority of the executing Member State *may* refuse..."). Since they constitute a derogation from the general principle of mutual recognition, the list of grounds is exhaustive, so the Member States cannot include any additional grounds for refusal in their implementing legislation.

Member States implemented the following grounds for refusal:

- the certificate is not produced, is incomplete or manifestly does not correspond to the decision (transposed as optional by: DE, PL, PT and RO; transposed as obligatory by: AT, CZ, DK, LV, NL; transposed as partially obligatory, partially optional by HU);
- *ne bis in idem* (transposed as optional by: PL, PT and RO; transposed as obligatory by: AT, CZ, DE, HU, LV, NL, SI; transposed as partially optional and partially obligatory by DK);
- principle of dual criminality (transposed as optional by: PL, DK; transposed as obligatory by: AT, CZ, DE, HU, NL, RO, LV and SI);
- immunity (transposed as optional by: PT and RO; transposed as obligatory by: AT, CZ, DK, HU, LV, NL and SI);
- rights of any interested party in the case (transposed as optional by: PL, PT and RO; transposed as obligatory by: AT, CZ, DK, NL and SI; not transposed by HU, LV);
- proceedings *in absentia* without representation by a legal counsel (transposed as optional by: PL, PT and RO; transposed as obligatory by: AT, CZ, DE, DK, HU, LV, NL and SI);
- principle of territoriality (transposed as optional by: CZ, HU, NL, PL, PT and RO; transposed as obligatory by: AT, SI; transposed partially as optional and partially as obligatory by DE and DK, not transposed by LV);

² Judgment of the European Court of Justice, 6 October 2009, case C-123/08, *Wolzenburg*, [OJ C 116 of 09.05.2008, p.18](#)

- confiscation under the extended powers of confiscation (transposed as optional by: DK, NL, transposed as obligatory by: AT, CZ, PL, not transposed by HU, RO, SI, LV);
- the execution is statute-barred (transposed as optional by: DE, DK, PL, PT and RO; transposed as obligatory by: AT, LV, NL and SI);
- FI did not transpose any grounds for refusal stipulated by the Framework Decision, but established that the provisions of a legislative nature in the Framework Decision shall be observed as law.
- IE did not transpose any grounds for refusal stipulated by the Framework Decision.

Additional grounds laid down by the Member States:

- **AT** added the following obligatory grounds for refusal: the person has been granted an amnesty or pardon; the decision was given in breach of fundamental rights as enshrined in Article 6 of the TEU; the legal classification of a criminal offence is clearly erroneous or the person concerned attests that the confiscation order has already been executed.
- **CZ** included several additional obligatory grounds: the property is not liable to confiscation under other laws; the property has already been confiscated, has disappeared or cannot be found; the sentence has already been executed in another State; the person has been granted an amnesty or pardon, the execution would contravene CZ essential constitutional principles.
- **DE** added two optional grounds of refusal, respectively when the same assets are subject to a German confiscation or forfeiture order and when the same assets are subject to a third Member State's confiscation or forfeiture measure, in both cases subject to the proviso that it is in the public interest that the other measure should take precedence (only the former situation is foreseen by the Framework Decision, whose Article 10 stipulates that the competent authority may in such cases postpone – but not refuse - the execution of the confiscation measure).
- **DK** included the following obligatory grounds: the person concerned has been pardoned for the act in DK; ground to believe that the order was issued for the purpose of prosecuting or punishing a person on account of his sex, race, religion, ethnic origin, nationality, language, political opinion or sexual orientation.
- **FI** has added one obligatory ground: if there is a justified reason to suspect that the procedure violated the guarantee of a fair trial and the execution would be unreasonable.
- **HU** mentioned the following additional obligatory grounds: the criminal offence on which the decision is based falls under HU jurisdiction (Articles 3 and 4 of the Criminal Code); and the criminal offence is covered by an amnesty under HU law.
- **LV** has added as obligatory grounds the four following situations: it is not possible to execute the order in LV; the person has not reached the minimum age of criminal majority; there are reasons to believe that the penalty has been imposed on grounds related to race, religious affiliation, ethnicity, gender or political opinions and the fact that the decision would contravene fundamental principles of the LV legal system.

- Additional optional grounds established by **PL** cover: the offender is not subject to PL jurisdiction; the crime is pardoned by amnesty.
- **RO** included one additional optional ground: execution of the confiscation order would infringe upon constitutional principles.
- **SI** added the following obligatory grounds: the objects form part of the cultural heritage of SI; the person has been subject to amnesty or pardon; the confiscation is ordered by a decision which under the SI law could not be ordered in criminal proceedings; there are objective reasons to believe that the decision has been issued for the purpose of punishing a person on the grounds related to race, sex, political or religious views;
- **PT** and **IE** are the only Member States that did not include any additional grounds for refusal.

Numerous additional grounds for refusal established by the Member States clearly show that the implementation of Article 8 is highly unsatisfactory. Member States must comply with the Framework Decision by establishing only those grounds for refusal provided for in the Framework Decision. All additional grounds significantly limit the scope of practical application of the principle of mutual recognition and thus do not comply with the purpose, spirit and letter of the Framework Decision.

Article 9 – Legal remedies in the executing State against recognition and execution

This Article provides for an obligation of the executing State to ensure that interested parties have effective legal remedies against the decision on recognition and execution of a confiscation order. The conditions for bringing an action may not be less advantageous than those applying to similar actions of purely domestic nature. Article 9(2) limits the possibility to review the decision in the executing State as the substantive reasons for the confiscation order may only be challenged in the issuing State.

Most Member States (AT, CZ, DK, FI, HU, LV, NL, PL, PT and SI) correctly transposed the first part of this Article. However, some (AT, DK, LV, NL and PL) did not include Article 9(2) in their legislation. Only CZ, FI, HU, PT, SI transposed this provision in full compliance with the Framework Decision. RO transposed the right to legal remedy of any interested party as a "right to compensation" and did not transpose Article 9(2). DE and IE did not implement Article 9.

Article 10 – Postponement of execution

As exceptions to the principle of immediate execution, the grounds of postponement should not be extended beyond the cases provided for in the Framework Decision.

Most Member States (AT, CZ, DE, DK, LV, NL, PL, PT, RO and SI) correctly transposed all or some of the grounds of postponement and did not include any additional ones. FI and IE did not transpose any grounds for postponement.

HU included the following additional grounds for postponement: the certificate is absent, the property forms a protected part of cultural heritage, the person can prove that the order has already been implemented. Such transposition is not in full compliance with the Framework Decision.

Article 11 – Multiple confiscation orders

This Article establishes criteria to which the competent authority executing the confiscation order will give due consideration when deciding on two or more confiscation orders received concurrently.

AT, CZ, HU, LV, NL, PT, RO, SI have implemented this Article. DE, DK, FI, IE, PL did not transpose this article.

Article 12 - Law governing enforcement

According to Article 12 the execution of the confiscation order shall be governed by the law of the executing State. In cases when the confiscation has already been executed fully or in part, such amount shall be deducted in full from the amount confiscated in the executing State.

According to Article 12(3) a confiscation order issued against a legal person shall be executed even if the executing State does not recognise the principle of criminal liability of legal persons.

Article 12(4) establishes that no alternative measures to the confiscation order may be imposed unless the issuing State has given its consent.

AT and NL have implemented this Article entirely, while other Member States (CZ, DE, DK, FI, HU, IE, LV, PL, PT, RO and SI) have done so only partially. The partial implementation of this Article was mainly the result of non-transposition of paragraph 3 concerning legal persons. Some Member States invoked national legislation in this regard (AT, NL, PL), some did not transpose this provision or did not attach the relevant legislation (DK, IE, FI, PT, RO, SI). CZ national legislation does not recognise the criminal liability of legal persons and thus is not fully in line with this Article. However, it is partially possible to recognise and execute confiscation orders against a legal person under CZ law. CZ advised that it is currently preparing new legislation that will introduce the concept of administrative liability of legal persons for certain conduct into CZ law.

Article 13 – Amnesty, pardon, review of confiscation order

According to this Article both amnesty and pardon may be granted by the issuing State as well as the executing State, but only the issuing State may determine applications for review of the confiscation order.

Member States chose various methods to implement this Article. PT and RO followed the wording of the Framework Decision. Some Member States referred only to the situation in which pardon or amnesty is granted according to their national law (DK, NL, HU, SI). LV referred to the situation in which an amnesty and pardon decided in the issuing Member State is binding on it. AT, CZ, DK, HU and SI transposed the provision relating to amnesty and pardon as an obligatory ground for refusal and PL as optional ground for refusal. As to the review, AT, CZ, NL, PT declared that this provision does not need transposition.

DE, FI and IE have not transposed this Article.

Article 14 – Consequences of transmission of confiscation orders

This Article stipulates that the transmission of a confiscation order does not restrict the right of the issuing State to execute the confiscation order itself. However, this must be reconciled with the duty to avoid the risk of exceeding the amount indicated in the confiscation order.

AT, CZ, LV, NL, RO, SI implemented this Article entirely; HU, PL and PT did so only partially.

DK stated this provision did not require transposition into its national law. DE, FI and IE did not implement this provision.

Article 15 – Termination of enforcement

This Article provides for an obligation to inform the competent authority in the executing State forthwith of any decision or measure as a result of which the order ceases to be enforceable or is withdrawn from the executing State for any other reason. As a result of such information, the executing State is obliged to terminate enforcement of the order.

AT, CZ, DK, HU, LV, NL, PL, PT, SI and RO have transposed this provision entirely. DE, FI and IE have not implemented this Article.

Article 16 – Disposal of confiscated property

This Article establishes rules on disposal of money and other property obtained from the execution of the confiscation order. These rules apply unless otherwise agreed between the issuing and the executing State.

This Article has been implemented by AT, CZ, DK, HU, NL, PL, PT, RO and SI, and partially by DE.

LV established the possibility for the Ministry of Justice to decide on a request from the issuing State on distribution of money in line with the Framework Decision. However, the LV Ministry of Justice does not have an obligation to do so. FI and IE have not implemented this provision.

Article 17 - Information on the result of the execution

According to this Article the competent authority of the executing State shall inform the competent authority of the issuing State without delay of decisions made in relation to recognition or execution.

AT, CZ, DK, HU, LV, NL, PL, PT, RO and SI have implemented this Article.

DE, FI and IE have not implemented this provision.

Article 18 – Reimbursement

This provision establishes rules under which an executing State will be reimbursed by the issuing State for the sums paid in damages to the interested parties for the execution of a confiscation order. CZ, DK, PL, PT and RO implemented this provision. FI refers in its national legislation to the relevant article of the Framework Decision. AT, DE, IE, HU, LV, NL and SI did not implement this provision.

Article 19 – Languages

Article 19 states that the certificate must be translated into the official language or one of the official languages of the executing State. However, any Member State may at any time declare that it will accept a translation in one or more other official languages.

The majority of Member States require a translation in their own official language (AT, CZ, DK, IE, HU, LV, PL, PT and RO). Other Member States will accept English in addition (NL, SI). FI will accept certificates in Finnish, Swedish or English and in other languages if there are no impediments to the approval of the certificate.

Article 20 – Costs

This Article states that Member States shall not claim a refund of costs resulting from application of this instrument from each other. AT, CZ, NL, PL, PT and SI have implemented this Article. DE, IE, HU, LV and RO have not done so. FI refers in its national legislation to the relevant Article of the Framework Decision. DK stated that this provision does not require transposition.

3. CONCLUSIONS

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 MS 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.