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I

(Information)

COMMISSION

Interest rate applied by the European Central Bank to its main refinancing operations ⁽¹⁾:**3,30 % on 1 August 2002****Euro exchange rates ⁽²⁾****1 August 2002***(2002/C 184/01)***1 euro =**

Currency	Exchange rate	Currency	Exchange rate		
USD	US dollar	0,976	LVL	Latvian lats	0,5895
JPY	Japanese yen	116,94	MTL	Maltese lira	0,4127
DKK	Danish krone	7,4291	PLN	Polish zloty	4,092
GBP	Pound sterling	0,6274	ROL	Romanian leu	321 30
SEK	Swedish krona	9,3205	SIT	Slovenian tolar	226,8914
CHF	Swiss franc	1,4505	SKK	Slovak koruna	44,23
ISK	Iceland króna	82,9	TRL	Turkish lira	1646000
NOK	Norwegian krone	7,449	AUD	Australian dollar	1,8121
BGN	Bulgarian lev	1,9468	CAD	Canadian dollar	1,5461
CYP	Cyprus pound	0,57448	HKD	Hong Kong dollar	7,6127
CZK	Czech koruna	30,277	NZD	New Zealand dollar	2,1074
EEK	Estonian kroon	15,6466	SGD	Singapore dollar	1,7216
HUF	Hungarian forint	244,95	KRW	South Korean won	1149,53
LTL	Lithuanian litas	3,4524	ZAR	South African rand	10,026

Prior notification of a concentration**(Case COMP/M.2932 — CVC/Halfords)****Candidate case for simplified procedure**

(2002/C 184/02)

(Text with EEA relevance)

1. On 25 July 2002 the Commission received notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 ⁽¹⁾, as last amended by Regulation (EC) No 1310/97 ⁽²⁾, by which the CVC Group acquires, within the meaning of Article 3(1)b of that Regulation, control of the whole of the undertaking Halfords Limited, by way of purchase of shares.

2. The business activities of the undertakings concerned are:

— CVC Group: provision of investment and management advice and management of investment funds.

— Halfords Limited: retail of car parts and accessories and cycles and cycle accessories.

3. On preliminary examination, the Commission finds that the notified concentration could fall within the scope of Regulation (EEC) No 4064/89. However, the final decision on this point is reserved. Pursuant to the Commission Notice on a simplified procedure for treatment of certain concentrations under Council Regulation (EEC) No 4064/89 ⁽³⁾, it should be noted that this case is a candidate for treatment under the procedure set out in the notice.

4. The Commission invites interested third parties to submit their possible observations on the proposed operation.

Observations must reach the Commission not later than 10 days following the date of this publication. Observations can be sent by fax (No (32-2) 296 43 01 or 296 72 44) or by post, under reference COMP/M.2932 — CVC/Halfords, to:

European Commission,
Directorate-General for Competition,
Directorate B — Merger Task Force,
J-70,
B-1049 Brussels.

⁽¹⁾ OJ L 395, 30.12.1989, p. 1; corrigendum: OJ L 257, 21.9.1990, p. 13.

⁽²⁾ OJ L 180, 9.7.1997, p. 1; corrigendum: OJ L 40, 13.2.1998, p. 17.

⁽³⁾ OJ C 217, 29.7.2000, p. 32.

II

(Preparatory Acts pursuant to Title VI of the Treaty on European Union)

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

(2002/C 184/03)

THE COUNCIL OF THE EUROPEAN UNION,

criminal law and procedures on money laundering (e.g. tracing, freezing and confiscating funds).

Having regard to the Treaty on European Union, and in particular Articles 29, 31(c) and 34(2)(b),

Having regard to the initiative of the Kingdom of Denmark,

Having regard to the opinion of the European Parliament,

Whereas:

(1) 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.

(2) In the conclusions of the Vienna European Council of December 1998, the European Council called for a strengthening of EU efforts to combat international organised crime in accordance with the Council's and the Commission's action plan on how best to implement the provisions of the Treaty of Amsterdam on an area of freedom, security and justice ⁽¹⁾.

(3) Pursuant to point 50(b) of the Vienna Action Plan, within five years of the entry into force of the Treaty of Amsterdam, national provisions governing seizures and confiscation of the proceeds from crime must be improved and approximated where necessary, taking account of the rights of third parties in bona fide.

(4) Point 51 of the conclusions of the Tampere European Council of 15 and 16 October 1999 stresses that money laundering is at the very heart of organised crime, and should be rooted out wherever it occurs and that the European Council is determined to ensure that concrete steps are taken to trace, freeze, seize and confiscate the proceeds from crime. The European Council also calls in point 55 for the approximation of

(5) Pursuant to Recommendation 19 in the 2000 action plan entitled 'The prevention and control of organised crime: a European Union strategy for the beginning of the new millennium', which was approved by the Council on 27 March 2000 ⁽²⁾, an examination should be made of the possible need for an instrument which, taking into account best practice in the Member States and with due respect for fundamental legal principles, introduces the possibility of mitigating, under criminal, civil or fiscal law, as appropriate, the onus of proof regarding the source of assets held by a person convicted of an offence related to organised crime.

(6) Pursuant to Article 12 on confiscation and seizure of the United Nations' Convention of 12 December 2000 against Transnational Organised Crime, States Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the principles of their domestic law and with the nature of judicial proceedings.

(7) All Member States have ratified the Council of Europe Convention of 8 November 1990 on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime. Some Member States have submitted declarations with regard to Article 2 of the Convention concerning confiscation so as to be obliged to confiscate proceeds only from a number of specified offences.

(8) The Council Framework Decision No 2001/500/JHA of 26 June 2001 ⁽³⁾ lays down provisions on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds from crime. Under that Framework Decision, Member States are also obliged not to make or uphold reservations in respect of the provisions of the Council of Europe Convention concerning confiscation, insofar as the offence is punishable by deprivation of liberty or a detention order for a maximum of more than one year.

⁽¹⁾ OJ C 19, 23.1.1999, p. 1.

⁽²⁾ OJ C 124, 3.5.2000, p. 1.

⁽³⁾ OJ L 182, 5.7.2001, p. 1.

(9) 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.

(10) 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,

HAS ADOPTED THE FOLLOWING FRAMEWORK DECISION:

Article 1

Definitions

For the purposes of this Framework Decision:

- 'proceeds' means any economic advantage from criminal offences. It may consist of any form of property,
- 'property' includes property of any description, whether corporeal or incorporeal, movable or immovable, and legal documents or instruments evidencing title to or interest in such property,
- 'instrumentalities' means any property used or intended to be used, in any manner, wholly or in part, to commit a criminal offence or criminal offences,
- 'confiscation' means a penalty or measure, ordered by a court following proceedings in relation to a criminal offence or criminal offences, resulting in the final deprivation of property.

Article 2

Confiscation

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 one year, or property the value of which corresponds to such proceeds.

Article 3

Extended powers of confiscation

1. 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 six years in prison.

2. 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 under the conditions set out in paragraph 1. Member States may disregard cases where the property was acquired more than three years prior to the commission of the offence which forms the basis for confiscation pursuant to paragraph 1, or cases where the marriage or cohabitation did not exist at the time of acquisition.

3. Member States shall also adopt the necessary measures to enable them, in accordance with the conditions set out in paragraph 1, to confiscate, either wholly or in part, property transferred to a legal person in respect of which the person concerned, acting either alone or in conjunction with his closest relations, has a controlling influence. The same shall apply if the person concerned receives a significant part of the legal person's income. Member States may disregard cases where the property was transferred to the legal person more than three years prior to the commission of the offence which forms the basis for confiscation pursuant to paragraph 1.

4. Confiscation pursuant to paragraphs 1 to 3 may not be effected if the person concerned renders it probable that the property was acquired in a legitimate manner or by legitimately acquired means. Member States shall therefore ensure that during the criminal prosecution, the person concerned has the opportunity to present information concerning the acquisition of property.

5. Finally, Member States shall adopt the necessary measures to enable them to confiscate, in place of property as specified in paragraphs 1, 2 and 3, an amount equivalent to the value of the property or a part thereof.

*Article 4***Implementation**

1. Member States shall adopt the necessary measures to comply with this Framework Decision by [...] (*).

2. Member States shall transmit to the General Secretariat of the Council of the European Union and to the Commission of the European Communities, at the latest by the same date, the text of the provisions transposing into their national law the obligations imposed on them under this Framework Decision. In accordance with a report established on the basis of this information and a written report from the Commission, the

(*) Two years after the date on which the Framework Decision is adopted.

Council shall assess, by [...] (**) at the latest, the extent to which Member States have taken the necessary measures in order to comply with this Framework Decision.

*Article 5***Entry into force**

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

Done at ...

For the Council

The President

...

(**) Three months after the date on which the Framework Decision is implemented.

Initiative of the Kingdom of Denmark with a view to the adoption of Council Framework Decision on combating corruption in the private sector

(2002/C 184/04)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Articles 29, 31(e) and 34(2)(b) thereof,

Having regard to the initiative of the Kingdom of Denmark,

Having regard to the opinion of the European Parliament,

Whereas:

(1) Along with globalisation, recent years have brought an increase in cross-border trade in goods and services. Any corruption in the private sector within a Member State is thus not just a domestic problem but also a transnational problem, most effectively tackled by means of EU joint action.

(2) On 26 May 1997 the Council approved a Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union⁽¹⁾. However, a number of Member States have not yet ratified that Convention.

(3) On 22 December 1998, the Council also adopted Joint Action 98/742/JHA on corruption in the private sector⁽²⁾.

In connection with the adoption of that Joint Action, the Council issued a statement to the effect that it agreed that the Joint Action represents the first step at EU level towards combating such corruption, and that additional measures will be implemented at a later stage in the light of the outcome of the assessment which is to take place pursuant to Article 7(2) of the Joint Action. A report on Member States' transposition of that Joint Action into national law is not yet available.

(4) Under Article 29 of the Treaty on European Union, it is the Union's objective to provide citizens with a high level of safety within an area of freedom, security and justice, an objective to be achieved by preventing and combating crime, organised or otherwise, including corruption.

(5) According to point 48 of the conclusions of the European Council meeting in Tampere on 15 and 16 October 1999, corruption is an area of particular relevance in establishing minimum rules on what constitutes a criminal offence in Member States and the penalties applicable.

(6) An OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions was approved at a negotiating conference on 21 November 1997, and the Council of Europe has also approved a Criminal Law Convention on Corruption, which opened for signature on 27 January 1999. That Convention is accompanied by an Agreement establishing the Group of States against Corruption (GRECO). Negotiations have also been opened for a UN Convention on combating corruption.

⁽¹⁾ OJ C 195, 25.6.1997, p. 2.

⁽²⁾ OJ L 358, 31.12.1998, p. 2.

(7) Member States attach particular importance to combating corruption in both the public and the private sector, in the belief that in both those sectors it poses a threat to a law-abiding society as well as distorting competition and impeding sound economic development.

(8) The aim of this Framework Decision is in particular to ensure that both active and passive corruption in the private sector is a criminal offence in all Member States, that legal persons may also be held responsible for such offences, and that the offences incur effective, proportionate and dissuasive penalties,

HAS ADOPTED THIS FRAMEWORK DECISION:

Article 1

Definitions

For the purposes of this Framework Decision:

- 'Convention on corruption' means the Convention of 26 May 1997 on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union;
- 'Council of Europe Convention on corruption' means the Council of Europe Criminal Law Convention on Corruption of 27 January 1999;
- 'legal person' means any entity having such status under the applicable national law, except for States or other public bodies acting in the exercise of State authority and for public international organisations.

Article 2

Active and passive corruption in the private sector

Member States shall take the necessary measures to ensure that the following intentional conduct constitutes a criminal offence, when it is committed in the course of business activities:

- (a) promising, offering or giving, directly or through an intermediary, to a person who in any capacity directs or works for a private-sector entity, an undue advantage of any kind, for that person or for a third party, in order that the person should perform or refrain from performing any act, in breach of that person's duties;
- (b) directly or through an intermediary, requesting or receiving an undue advantage of any kind, or accepting the promise of such an advantage, for oneself or for a third party, while in any capacity directing or working for a private-sector entity, in order to perform or refrain from performing any act, in breach of one's duties.

Article 3

Instigation, aiding and abetting, incitement and attempt

Member States shall take the necessary measures to ensure that instigating, aiding and abetting, inciting and attempting

commission of the conduct referred to in Article 2 constitute criminal offences.

Article 4

Convention-related commitments

1. Those Member States which have not yet ratified the Convention on corruption shall undertake to do so within one year following the entry into force of this Framework Decision.

2. Those Member States which have not yet ratified the Council of Europe Convention on corruption shall undertake to do so within one year following the entry into force of this Framework Decision.

Article 5

Penalties

1. Each Member State shall take the necessary measures to ensure that the conduct referred to in Articles 2 and 3 is punishable by a maximum penalty of between at least one and three years of imprisonment.

2. In addition, each Member State shall take the necessary measures to ensure that it is possible, where special circumstances so dictate, e.g. in the case of repeat offences:

- (a) as a corollary of a conviction for the practices referred to in Articles 2 and 3, temporarily to disqualify a natural person from carrying on a business, or from carrying it on in certain forms, where the facts established give reason to believe there to be a clear risk of abuse of position or office;
- (b) temporarily to disqualify a natural person from being a founding member, manager or director of any limited-liability company or company requiring special public approval, where the facts established give reason to believe there to be a clear risk of abuse of position or office.

Article 6

Liability of legal persons

1. Each Member State shall take the necessary measures to ensure that legal persons can be held liable for offences referred to in Articles 2 and 3 committed for their benefit by any person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on:

- (a) a power of representation of the legal person; or
- (b) an authority to take decisions on behalf of the legal person; or
- (c) an authority to exercise control within the legal person.

2. Apart from the cases provided for in paragraph 1, each Member State shall take the necessary measures to ensure that a legal person can be held liable where the lack of supervision or control by a person referred to in paragraph 1 has made possible the commission of an offence of the type referred to in Articles 2 and 3 for the benefit of that legal person by a person under its authority.

3. Liability of a legal person under paragraphs 1 and 2 shall not exclude criminal proceedings against natural persons who are involved as perpetrators, instigators or accessories in an offence of the type referred to in Articles 2 and 3.

Article 7

Penalties for legal persons

1. Each Member State shall take the necessary measures to ensure that a legal person held liable pursuant to Article 6(1) is punishable by effective, proportionate and dissuasive penalties, which shall include criminal or non-criminal fines and may include other penalties such as:

- (a) exclusion from entitlement to public benefits or aid;
- (b) temporary or permanent disqualification from the practice of commercial activities;
- (c) placing under judicial supervision; or
- (d) a judicial winding-up order.

2. Each Member State shall take the necessary measures to ensure that a legal person held liable pursuant to Article 6(2) is punishable by penalties or measures which are effective, proportionate and dissuasive.

Article 8

Jurisdiction

1. Each Member State shall take the necessary measures to establish its jurisdiction with regard to the offences referred to in Articles 2 and 3, where the offence has been committed:

- (a) in whole or in part within its territory;
- (b) by one of its nationals or residents; or
- (c) for the benefit of a legal person that has its head office in the territory of that Member State.

2. Any Member State may decide that it will not apply the jurisdiction rules in paragraph 1(b) and (c), or will apply them only in specific cases or circumstances, where the offence has been committed outside its territory.

3. Any Member State which, under its domestic law, does not as yet extradite its own nationals shall take the necessary measures to establish its jurisdiction with regard to the offences referred to in Articles 2 and 3, when committed by its own nationals outside its territory.

4. Member States which decide to apply paragraph 2 shall inform the General Secretariat of the Council of the European Union (General Secretariat of the Council) and the Commission of the European Communities (Commission) accordingly, where appropriate with an indication of the specific cases or circumstances in which the decision applies.

Article 9

Repeal

Joint Action 98/742/JHA is hereby repealed.

Article 10

Implementation

1. Member States shall take the necessary measures to comply with this Framework Decision by [...] (*) at the latest.

2. By the same date, 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 imposed on them under this Framework Decision. On the basis of a report drawn up from that information and a written report from the Commission, the Council shall assess, by [...] (**), whether Member States have taken the necessary measures to comply with this Framework Decision.

Article 11

Entry into force

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

Done at ...

For the Council

The President

...

(*) Date to be inserted: two years after adoption of the Framework Decision.

(**) Date to be inserted: three months after the time limit for implementation of the Framework Decision.

**Initiative of the Kingdom of Denmark with a view to the adoption of a Council Framework
Decision on the execution in the European Union of confiscation orders**

(2002/C 184/05)

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the initiative by the Kingdom of Denmark,

Having regard to the opinion of the European Parliament,

Whereas:

- (1) The European Council, meeting in Tampere on 15 and 16 October 1999, stressed that the principle of mutual recognition should become the cornerstone of judicial cooperation in both civil and criminal matters within the Union.
- (2) According to paragraph 51 of the conclusions of the Tampere European Council of 15 and 16 October 1999, 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. In that connection, the European Council calls for the approximation of criminal law and procedures on money laundering (e.g. tracing, freezing and confiscating funds) (see paragraph 55 of the conclusions).
- (3) All Member States have ratified the Council of Europe Convention of 8 November 1990 on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime. The Convention obliges signatories to recognise and enforce a confiscation order made by another party, or to submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such order is granted, enforce it. The Parties may refuse requests for confiscation *inter alia* if the offence to which the request relates would not be an offence under the law of the requested Party, or if under the law of the requested Party confiscation is not provided for in respect of the type of offence to which the request relates.
- (4) The Council Framework Decision 2001/500/JHA of 26 June 2001 ⁽¹⁾ lays down provisions on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds from crime. Under that Framework Decision, Member States are also

obliged not to make or uphold reservations in respect of the provisions of the Council of Europe Convention concerning confiscation, insofar as the offence is punishable by deprivation of liberty or a detention order for a maximum of more than one year.

- (5) On 30 November 2000 the Council adopted a programme of measures to implement the principle of mutual recognition of decisions in criminal matters, giving first priority (measures 6 and 7) to the adoption of an instrument applying the principle of mutual recognition to the freezing of evidence and property. Moreover, pursuant to paragraph 3.3 of the programme, the aim is to improve enforcement in one Member State of a confiscation order, *inter alia* for the purpose of restitution to a victim of a criminal offence, issued in another Member State, taking into account the existence of the European Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of 8 November 1990. With a view to achieving this aim, it must be examined in particular whether the grounds for refusal of enforcement of a confiscation measure in Article 18 of the 1990 Convention are all compatible with the principle of mutual recognition.
- (6) Finally, on 30 November 2000 the French Republic, the Kingdom of Sweden and the Kingdom of Belgium submitted a proposal for a Framework Decision on the execution in the European Union of orders freezing property or evidence.
- (7) The main motive for 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. It is not enough merely to ensure mutual recognition within the European Union of temporary legal measures such as freezing and seizure; effective control of economic crime also requires the mutual recognition of orders to confiscate the proceeds from crime.
- (8) 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 judicial authorities of another Member State. This Framework Decision is linked to the Framework Decision on confiscation of the proceeds of crime. 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.

⁽¹⁾ OJ L 182, 5.7.2001, p. 1.

- (9) Cooperation between Member States, based on the principle of mutual recognition and immediate execution of judicial decisions, presupposes confidence that the decisions to be recognised and enforced will always be taken in compliance with the principles of legality, subsidiarity and proportionality. It also presupposes that the rights granted to the parties or bona fide interested third parties will be preserved.
- (10) This Framework Decision respects the fundamental rights and principles recognised in Article 6 of the Treaty on European Union and reflected in the Charter of Fundamental Rights of the European Union, notably Chapter VI thereof. Nothing in this Framework Decision may be interpreted as prohibiting refusal to confiscate property for which a confiscation order has been issued when objective grounds exist for believing that the confiscation order was issued for the purpose of prosecuting or punishing a person on account of his or her sex, race, religion, ethnic origin, nationality, language, political opinion or sexual orientation, or that that person's position may be prejudiced for any of these reasons.
- (11) This Framework Decision shall not prevent any Member State from applying its constitutional rules, *inter alia* relating to due process,
- (b) 'executing State' shall mean the Member State in whose territory the property to be confiscated is located;
- (c) 'confiscation' shall mean a sanction or measure ordered by a court following proceedings in relation to a criminal offence or offences, resulting in the definitive expropriation of property;
- (d) 'property' shall mean property of any description, whether corporeal or incorporeal, movable or immovable, and legal documents and instruments evidencing title to or interest in such property, which the competent judicial authority in the issuing State considers is the proceeds of an offence, or equivalent to either the full value or part of the value of such proceeds;
- (e) 'proceeds' shall mean any economic advantage derived from criminal activities. It may consist of any form of property;
- (f) 'order' shall mean a final sanction or measure imposed by a competent judicial authority in respect of an offence whereby confiscation is ordered.

Article 3

Determination of the competent authorities

1. The issuing judicial authority shall be the court of the issuing State which has issued the confiscation order.
2. The executing judicial authority shall be the judicial authority of the executing State which is competent under the law of that State.
3. Each Member State shall inform the General Secretariat of the Council of the European Union (General Secretariat of the Council), of the competent authorities under its law. If a Member State so desires, it may inform the General Secretariat of the Council of the central authority through which a request for execution of a confiscation order may be transmitted.

Article 4

Transmission of confiscation orders

1. A confiscation order within the meaning of this Framework Decision, together with a certificate as provided for in this Article, may be transmitted to a Member State in which the natural or legal person against whom the order has been issued has property or income, is normally resident or, in the case of a legal person, is registered or has its head office.
2. The certificate, the standard form for which is given in the Annex, shall be signed, and its contents certified as accurate, by the competent authority in the issuing State.

HAS ADOPTED THE FOLLOWING FRAMEWORK DECISION:

Article 1

Objective

1. The purpose of this Framework Decision is to facilitate cooperation between Member States as regards the recognition and execution of confiscation orders so as to oblige a Member State to recognise and execute in its territory a confiscation order issued by a judicial authority of another Member State.
2. This Framework Decision shall not have the effect of amending the obligation to respect the fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty.

Article 2

Definitions

For the purposes of this Framework Decision:

- (a) 'issuing State' shall mean the Member State in which a judicial authority, as defined in the national law of the issuing State, has issued, validated or in any way confirmed a confiscation order within the framework of criminal proceedings;

3. The order or a certified copy thereof, together with the certificate, shall be transmitted by the competent judicial authority in the issuing State directly to the judicial authority in the executing State which is competent to execute it by any means which leaves a written record under conditions allowing the executing State to establish authenticity.

4. If the judicial authority competent to execute the order is not known to the judicial authority in the issuing State, the latter shall make all necessary enquiries, including via the contact points of the European judicial network, in order to obtain information from the executing State.

5. Where the judicial authority in the executing State which receives an order has no jurisdiction to recognise it and take the necessary measures for its execution, it shall, ex officio, transmit the order to the judicial authority which is competent to execute it, and shall inform the competent authority in the issuing State accordingly.

Article 5

Offences

1. The following offences, if they are punishable in the issuing State by a custodial sentence of a maximum of at least three years as defined by the law of the issuing State, shall give rise to execution on the basis of a confiscation order without verification of the double criminality of the act:

- participation in a criminal organisation,
- acts of terrorism,
- trafficking in human beings,
- sexual exploitation of children and child pornography,
- illicit trafficking in narcotic drugs and psychotropic substances,
- 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 of the euro,
- computer-related crime,

- environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties,
- smuggling of human beings,
- murder, grievous bodily injury,
- illicit trade in human organs and tissue,
- kidnapping, illegal restraint and hostage-taking,
- acts of racism and xenophobia,
- organised or armed robbery,
- illicit trafficking in cultural goods, including antiques and works of art,
- swindling,
- racketeering and extortion,
- counterfeiting and product piracy,
- 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,
- motor vehicle crime,
- rape,
- arson,
- crimes within the jurisdiction of the International Criminal Tribunal,
- unlawful seizure of aircraft/ships,
- sabotage.

2. The Council may decide to add other categories of offence to the list contained in paragraph 1 at any time, acting unanimously after consultation of the European Parliament under the conditions laid down in Article 39(1) of the Treaty. The Council shall consider, in the light of the report submitted by the Commission pursuant to Article 19 of this Framework Decision, whether the list should be extended or amended.

3. For offences other than those covered by paragraph 1, the executing State may make the recognition and execution of a confiscation order subject to the condition that the acts for which the order was issued constitute an offence which permits confiscation under the law of the executing State, whatever the constituent elements or however it is described under the law of the issuing State.

Article 6

Recognition and execution of orders

1. The competent authorities in the executing State shall recognise and execute an order which has been transmitted in accordance with Article 4 without further formality, and shall forthwith take all the necessary measures for its execution, unless the competent authorities decide to invoke one of the grounds for non-recognition or non-execution provided for in Article 7.

2. If a request for confiscation concerns a specific item of property, the parties may agree that confiscation in the executing State may take the form of a requirement to pay a sum of money corresponding to the value of the property.

Article 7

Reasons for non-recognition or non-execution

1. The competent authority in the executing State may oppose the recognition and execution of the order if the certificate provided for in Article 4 is not produced, is incomplete, has not been translated into one of the official languages of the executing State or manifestly does not correspond to the order.

2. The competent authority in the executing State may also oppose the recognition and execution of the order if it is established that:

(a) a confiscation order has been issued against the person concerned in respect of the same acts

— in the executing State, or

— in any State other than the issuing or the executing State, and that order has been executed, is in the process of being executed or can no longer be executed under the law of the State in which the judgment was issued;

(b) in one of the cases referred to in Article 5(3), the confiscation order relates to acts which do not constitute an offence under the law of the executing State; however, in relation to taxes, duties, customs duties and exchange activities, execution of a confiscation order may not be

refused on the ground that the law of the executing State does not impose the same kind of tax or duty or does not contain the same types of rules concerning taxes, duties, customs duties and exchange activities as the law of the issuing State;

(c) there is immunity or privilege under the law of the executing State, which makes it impossible to execute the confiscation order,

(d) third party rights under the law of the executing State make it impossible to execute the confiscation order;

(e) a confiscation order in respect of a criminal offence was issued against a natural or legal person in absentia, and the person concerned was not served with the order in person or otherwise informed of the date and place of the hearing which led to the order in absentia, provided that the person concerned has not had an opportunity to challenge or appeal against the order in the issuing State;

(f) the confiscation order relates to criminal offences which:

— under the law of the executing State, are regarded as having been committed wholly or partly within its territory, or in a place equivalent to its territory, or

— were committed outside the territory of the issuing State, and the law of the executing State does not permit legal proceedings to be taken in respect of such offences where they are committed outside that State's territory;

(g) the judicial authorities in the executing State have decided not to institute legal proceedings in respect of the offence which forms the basis for the confiscation order, or where the person concerned has had another final judgement delivered against him in respect of the same acts in a Member State, thereby precluding further legal proceedings;

(h) under the law of the executing State, the period of limitation has expired with regard to the issuing or execution of a confiscation order in connection with the offence which forms the basis for the confiscation order, and the executing State is competent under its own law.

3. Before deciding not to recognise or execute an order, the competent authority in the executing State shall consult the competent authority in the issuing State. The competent authority in the issuing State shall be requested *inter alia* to supply without delay any information which is needed for the decision to recognise and execute the confiscation order. If it is obvious that the confiscation order cannot be executed, it shall not be necessary to consult the issuing State.

*Article 8***Legal remedies**

1. Member States shall put in place the necessary arrangements to ensure that any interested party, including bona fide third parties, have legal remedies with suspensive effect against a confiscation order executed pursuant to Article 6, in order to preserve their legitimate interests. The action shall be brought before a court in the issuing State or in the executing State in accordance with the national law of each State. The executing State shall take the necessary measures to hold the property while the relevant order is being issued.
2. The substantial reasons for issuing the confiscation order can be challenged only in an action brought before a court in the issuing State.
3. If the action is brought in the executing State, the judicial authority of the issuing State shall be informed thereof and of the grounds of the action, so that it can submit the arguments that it deems necessary. It shall be informed of the outcome of the action.
4. The issuing and executing States shall take the necessary measures to facilitate the exercise of the right to bring an action mentioned in paragraph 1, in particular by providing adequate information to interested parties.
5. The issuing State shall ensure that any time limits for bringing an action mentioned in paragraph 1 are applied in a way that guarantees the possibility of an effective legal remedy for interested parties.

*Article 9***Postponement of execution**

1. The competent judicial authority may postpone the execution of a confiscation order transmitted in accordance with Article 4:
 - (a) in the cases referred to in Article 8, or
 - (b) where its execution might damage an ongoing criminal investigation, until such time as it deems reasonable, or
 - (c) in cases where it is considered necessary to have the order or parts thereof translated, until such time as the translation is made available.
2. A report on the postponement of the execution of the confiscation order, including the grounds for the postponement and, if possible, the expected duration of the postponement, shall be made forthwith to the competent authority in the issuing State by any means capable of producing a written record.

3. As soon as the ground for postponement has ceased to exist, the competent judicial authority shall forthwith take the necessary measures for the execution of the confiscation order and inform the competent authority in the issuing State thereof by any means capable of producing a written record.

*Article 10***Decision in the event of multiple requests**

1. If two or more Member States have each issued one or more confiscation orders against one or more persons, and the persons concerned in the executing State do not have sufficient means to enable all of the orders to be executed, the decision on which of the confiscation orders is or are to be executed shall be taken by the judicial authority in the executing State with due consideration of all the circumstances, in particular the involvement of frozen assets, the relative seriousness and the place of the offence, the extent to which the confiscated amount is to be used to cover compensation claims and the dates of the respective orders.
2. The judicial authority may consult Eurojust with a view to taking the decision referred to in paragraph 1.

*Article 11***Law governing execution**

1. Without prejudice to paragraph 3 of this Article, the execution of the order shall be governed by the law of the executing State and its authority alone shall be competent to decide on the procedures for execution and to determine all the measures relating thereto.
2. Any part of the amount in the case of confiscation of proceeds that is recovered in whatever manner in any State other than the executing State shall be deducted in full from the amount which is to be confiscated in the executing State.
3. An order for confiscation from a legal person shall be executed even if the executing State does not recognise the principle of criminal liability of legal persons.
4. A confiscation order shall be executed even if the natural person who is the subject of the confiscation order subsequently dies or the legal person which is the subject of the confiscation order is subsequently dissolved.
5. The executing State may not impose a custodial sentence or any other measure limiting a person's freedom as an alternative legal remedy as a result of a request pursuant to Article 4, unless the issuing State has given its consent to this in the request.

*Article 12***Amnesty, pardon, review of order**

1. Amnesty and pardon may be granted by the issuing State and also by the executing State.
2. Only the issuing State may decide on an application for review of the order.

*Article 13***Termination of execution**

The competent authority of the issuing State shall forthwith inform the competent authority of the executing State of any decision or measure as a result of which the order ceases to be enforceable or shall be withdrawn from the executing State for any other reason.

The executing State shall terminate execution of the order as soon as it is informed by the competent authority of the issuing State of that decision or measure.

*Article 14***Sharing of assets**

Confiscated assets or proceeds of the sale of confiscated property shall, after deduction of the executing State's costs, be returned to the issuing State unless otherwise agreed between the issuing State and the executing State.

*Article 15***Information on the result of the execution**

The competent authority of the executing State shall without delay inform the competent authority of the issuing State by any means which leaves a written record:

- (a) as soon as execution of the order has been completed;
- (b) of the total or partial non-execution of the order for the reasons referred to in Article 7, Article 12(1) or Article 13.

*Article 16***Languages**

1. The certificate shall be translated into the official language or one of the official languages of the executing State.
2. Any Member State may, when this Framework Decision is adopted or at a later date, state in a declaration deposited

with the General Secretariat of the Council that it will accept a translation in one or more other official languages of the Institutions of the European Communities.

*Article 17***Costs**

Without prejudice to Article 14 on the sharing of assets, Member States may not claim from each other the refund of costs resulting from application of this Framework Decision.

*Article 18***Relationship with other agreements and arrangements**

This Framework Decision shall not affect the application of more favourable provisions concerning the execution of confiscation orders in bilateral or multilateral agreements or arrangements between Member States.

*Article 19***Implementation**

1. Member States shall take the necessary measures to comply with this Framework Decision by 30 June 2004.
2. 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, no later than 31 December 2004, assess the extent to which Member States have taken the necessary measures to comply with this Framework Decision.
3. The General Secretariat of the Council shall notify the Member States and the Commission of the declarations made pursuant to Article 16(2), and of the contact points designated under Article 3(3).

*Article 20***Entry into force**

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

Done at ...

For the Council

The President

...

ANNEX

CERTIFICATE AS REFERRED TO IN ARTICLE 4

1. Issuing State
2. Competent authority issuing the order
 - 2.1. Name
 - 2.2. Address
 - 2.3. Telephone/fax/e-mail (including international dialling code)
 - 2.4. Language(s) in which it is possible to communicate with the issuing authority
3. Details of the person to whom the confiscation order applies
 - 3.1. Name
 - 3.2. Last known address
 - 3.3. Location of property to be confiscated (if known)
4. Details of the order
 - 4.1. Type and extent of the confiscation
 - 4.2. Indication of the provisions infringed and the extent to which they are covered by the list in Article 5(1)
 - 4.3. Description of the facts constituting the offence
5. Status of the order

Confirm that:

 - 5.1. The order is final
 - 5.2. Execution of the order is not barred by statutory time limitations
6. Notification of proceedings

Confirm that the person to whom the confiscation order applies has been duly notified of:

 - 6.1. The proceedings against him
 - 6.2. Any procedures and deadlines for appeal
7. Partial execution of the order

State whether:

 - 7.1. Any part of the amount to be confiscated has already been confiscated
 - 7.2. If so, the amount which has been confiscated
8. Alternative legal remedy
 - 8.1. Does the issuing State allow the application of alternative legal remedies?
 - 8.2. Can the issuing State agree to application of an alternative legal remedy in this case?
 - 8.2.1. If so, alternative legal remedies should be listed together with the maximum penalty in each case.

Done at ... on ...

Signature and/or stamp ...

III

(Notices)

COMMISSION

Call for the submission of proposals under a Community Action Programme promoting non-governmental organisations primarily active in the field of environmental protection

(2002/C 184/06)

Under the terms of Decision No 466/2002/EC of the European Parliament and of the Council of 1 March 2002 laying down a Community Action Programme promoting European environmental NGOs primarily active in the field of the environment and as detailed in the Call for Proposals for Member States dated 8 February 2002 (OJ C 35, 8.2.2002), the Commission invites non-governmental organisations registered in **Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, the Slovak Republic, Slovenia, Cyprus, Malta, Turkey, Former Yugoslav Republic of Macedonia, Albania, Federal Republic of Yugoslavia, Bosnia-Herzegovina, and Croatia**, which are primarily active in the field of environmental protection and enhancement with a view to sustainable development to present proposals with a view to obtaining a financial contribution for carrying out their work programme of the year 2002.

Only organisations from Countries that have formally agreed with the Community to participate in the action programme will be considered. Compliance with this criterion will be checked only at the final selection stage in October 2002.

The information dossier relating to this Call for Proposals can be obtained by applying in writing to the following address (preferably by fax):

Secretariat
European Commission
Office: BU-9 0/10
B-1049 Brussels
Fax (32-2) 296 95 60

It may alternatively be downloaded from the Commission web site at the following address:

http://europa.eu.int/comm/environment/funding/intro_en.htm

Proposals must be submitted by the **9 September 2002** at the latest.

Please note that a Call for Proposals for activities in the year 2003 will be launched at the end of September 2002.
