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REPORT

on the initiative of the French Republic with a view to adopting a Council Framework Decision on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds from crime (10232/2000 – C5-0393/2000 – 2000/0814(CNS))

Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

Rapporteur: Luis Marinho

Symbols for procedures

*	Consultation procedure *majority of the votes cast*
**I	Cooperation procedure (first reading) *majority of the votes cast*
**II	Cooperation procedure (second reading) *majority of the votes cast, to approve the common position* *majority of Parliament's component Members, to reject or amend the common position*
***	Assent procedure *majority of Parliament's component Members except in cases covered by Articles 105, 107, 161 and 300 of the EC Treaty and Article 7 of the EU Treaty*
***I	Codecision procedure (first reading) *majority of the votes cast*
***II	Codecision procedure (second reading) *majority of the votes cast, to approve the common position* *majority of Parliament's component Members, to reject or amend the common position*
***III	Codecision procedure (third reading) *majority of the votes cast, to approve the joint text*

(The type of procedure depends on the legal basis proposed by the Commission)

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PROCEDURAL PAGE

By letter of 27 July 2000 the Council consulted Parliament, pursuant to Article 39(1) of the EU Treaty, on an initiative of the French Republic with a view to adopting a Council Framework Decision on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds from crime (10232/2000 – 2000/0814(CNS)).

At the sitting of 4 September 2000 the President of Parliament announced that she had referred this initiative to the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs as the committee responsible (C5-0393/2000).

The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs had appointed Luis Marinho rapporteur at its meeting of 29 August 2000.

It considered the initiative of the French Republic and the draft report at its meetings of 13 September 2000, 12 October 2000 and 24 October 2000.

At the latter/last meeting it adopted the draft legislative resolution by 29 votes to 3, with 3 abstentions.

The following were present for the vote: Graham R. Watson (chairman); Robert J.E. Evans (vice-chairman); Bernd Posselt (vice-chairman); Luis Marinho (rapporteur); Jan Andersson (for Margot Keßler), Marco Cappato, Michael Cashman, Charlotte Cederschiöld, Carmen Cerdeira Morterero (for Martin Schulz), Carlos Coelho, Gérard M.J. Deprez, Giuseppe Di Lello Finuoli, Giorgos Dimitrakopoulos (for Rocco Buttiglione), Pernille Frahm, Adeline Hazan, Jorge Salvador Hernández Mollar, Anna Karamanou, Ewa Klamt, Ole Krarup, Alain Krivine (for Fodé Sylla), Baroness Sarah Ludford, Hartmut Nassauer, Elena Ornella Paciotti, Hubert Pirker, Martine Roure (for Sérgio Sousa Pinto), Ingo Schmitt (for Thierry Cornillet), Patsy Sörensen, Joke Swiebel, Anna Terrón i Cusí, Maurizio Turco (for Johan Van Hecke), Gianni Vattimo, Christian von Boetticher, Heidi Anneli Hautala (for Alima Boumediene-Thiery, pursuant to Rule 153(2)), Hanja Maij-Weggen (for Mary Elizabeth Banotti, pursuant to Rule 153(2)), and Cecilia Malmström (for Jan-Kees Wiebenga, pursuant to Rule 153(2)).

The report was tabled on 25 October 2000.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

LEGISLATIVE PROPOSAL

Initiative of the French Republic with a view to adopting a Council Framework Decision on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds from crime

(10232/2000 – C5-0393/2000 – 2000/0814(CNS))

The initiative is amended as follows:

Text proposed by the French Republic[1]	Amendments by Parliament
(Amendment 1) Recital 2	
Account should be taken of the Presidency conclusions of the European Council meeting in Tampere on 15 and 16 October 1999.	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***.
Justification:	
Mention should be made of the fact that the Vienna European Council, specifically Presidency conclusions 83, 84 and 88, had already pointed to the need for a European judicial area and mutual legal assistance in criminal matters.	
(Amendment 2) Recital 2a (new)	
	The European Council considers the joint mobilisation of police and judicial resources to be necessary in order to guarantee that there is no hiding place for criminals or the proceeds of crime within the Union.
Justification:	
This text is taken from the second sentence of conclusion 6 of the Tampere European Council of 15 and 16 October 1999. We consider it important that it should be included in the present framework decision, because one of its motivations is based on the conclusions quoted above.	

[1] OJ C 243, 24.8.2000, p.9

(Amendment 3)
Recital 2b (new)

The European Council considers 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.

Justification:

The Vienna European Council of 11 and 12 December 1998 called, in conclusion 84, for the creation of a European judicial area. Following on from that appeal, and in accordance with the Treaty of Amsterdam, conclusion 48 of the Tampere European Council of 15 and 16 October 1999 described the first steps to be taken in the area of criminal law, involving the gradual approximation of the laws and regulations of the Member States, starting with sectors of particular relevance such as money laundering and the remaining crimes referred to in the present proposal for a framework decision.

(Amendment 4)
Recital 2c (new)

The European Council notes that money laundering is at the very heart of organised crime. It 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.

Justification:

This text is a word-for-word transcription of conclusion 51 of the Tampere European Council of 15 and 16 October 1999, which should be included in the content of the framework decision in order to make the underlying reasons for the initiative clear to the public, and to anyone interested in the matter.

(Amendment 5)
Article 1(a)

(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***.	(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 ***six months***.

Justification:

If the measures allowing the confiscation of instrumentalities and proceeds or assets whose value corresponds to that of the proceeds can be applied only to offences punishable by deprivation of liberty or a detention order for a maximum of more than one year, it will be impossible to confiscate instrumentalities and proceeds or assets of an equivalent value in the case of offences punishable by a lesser sentence.

Account has been taken of the fact that it would in practice be impossible for Member State authorities to cooperate internationally in the confiscation of instrumentalities and proceeds from 'minor' offences. Consequently, confiscation measures should apply to instrumentalities and proceeds from offences punishable by deprivation of liberty or a detention order for a maximum of more than six months.

Otherwise, a wide margin of impunity would be created which would be unjustifiable in a judicial area which circumstances and citizens demand should be genuinely 'European' and border-free.

(Amendment 6)
Article 1(b)

(b) Article 6, ***in so far as serious offences are concerned. Such offences should*** 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.	(b) Article 6, ***including*** in any event offences which are punishable by deprivation of liberty or a detention order for a maximum of more than ***six months and***, 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 ***three*** months.

Justification:

It is unacceptable that some Member States should be able to consider the establishment as offences of intentionally committed money laundering activities set out in subparagraph (a) of Article 6 of the Council of Europe Convention No 106 of 8 November 1990 to be inapplicable in their territory.

In any event, states should at least treat as money laundering activities the offences set out in Article 6(a) which are punishable by deprivation of liberty for a maximum of six months, in

some legal systems, or a minimum duration of more than three months, in the remaining legal systems.

Otherwise, it would not be possible for the proceeds from a range of fairly significant crimes to be confiscated in other EU countries.

In addition, the conjunction 'or' has been replaced by 'and' with a view to greater linguistic and semantic precision, creating a copulatory rather than a disjunctive clause, which presupposed that one of the clauses (one of the legal systems) would come into effect at the expense of the other. However, if the two legal systems are compatible, the two clauses referring to them should be joined using the conjunction 'and', suggesting a simple concept of addition, which tallies with the situation it is intended to describe.

(Amendment 7)
Article 2

Each Member State shall take the necessary steps 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 ***five*** years.	Each Member State shall take the necessary steps 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 ***four*** years. ***Each Member State shall take the necessary steps to ensure that the offences referred to in Article 6(1)(c) and (d) of the 1990 Convention, as they result from Article 1(b) of this Framework Decision, are punishable by deprivation of liberty for a maximum of not less than two years.***

Justification:

Bearing in mind that the offence of money laundering is punished by deprivation of liberty the duration of which varies widely among EU countries, ranging from one and a half years to 14 years for the same offence, the proposed threshold of four years is considered to take greater account of the actual circumstances, given that some countries will have to change their criminal law.

Likewise, there is no justification for failing to ensure uniform penalties for money laundering offences defined in subparagraphs (c) and (d) of Article 6 of the 1990 Convention throughout the territory of the European Union, as recommended in conclusion 55 of the Tampere European Council.

(Amendment 8)
Article 3

Each Member State shall take the necessary steps to ensure that its legislation and procedures on the confiscation of the proceeds from crime also allow 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 from crime in cases in which that value would be less than EUR ***4 000***. The words 'property', 'proceeds' and 'confiscation' shall have the same meaning as in Article 1 of the 1990 Convention.	Each Member State shall take the necessary steps to ensure that its legislation and procedures on the confiscation of the proceeds from crime also allow***, at least in cases in which the 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 from crime in cases in which that value would be less than EUR ***2 500***. The words 'property', 'proceeds' and 'confiscation' shall have the same meaning as in Article 1 of the 1990 Convention.

Justification:

It should be specified that the confiscation of property of an equivalent value to the proceeds from crime will always be an alternative measure which will only be used where it is impossible to seize the actual proceeds.

Furthermore, the sum of EUR 4 000 is too high, as the possibility for some Member States to exclude the confiscation of property of a lower value would provide criminals involved in money laundering offences with a wide margin of impunity.

EUR 2 500, still a significant sum, is more appropriate bearing in mind the judicial and administrative situation in the Member States, and will make it possible to reduce the margin of criminal impunity, which cannot be justified in the Union.

(Amendment 9)
Article 3a (new)

	1. Within the framework of the functioning of the European Judicial Network, each Member State shall prepare a user-friendly guide, including information about where to obtain advice,

setting out the assistance it can provide in identifying, tracing, freezing or seizing and confiscating instrumentalities and the proceeds from crime. The guide shall also include any important restrictions on such assistance and the information which requesting States should supply.
2. The General Secretariat of the Council of the European Union shall be sent the guides referred to in paragraph 1 and shall translate them into the official languages of the institutions of the European Community. The General Secretariat shall distribute the guides to Member States, the European Judicial Network and Europol.
3. Each Member State shall ensure that the guide referred to in paragraph 1 is kept up to date and that any changes are sent to the General Secretariat of the Council for translation and distribution in accordance with paragraph 2.

Justification:

The text of this amendment exactly corresponds to Article 2 of the Joint Action of 3 December 1998 (OJ L 333, 9.12.1998, p. 1).

The legal form of 'joint actions' were provided for by the Treaty of Maastricht but have disappeared from the legal environment of the European Union following the Treaty of Amsterdam. Nevertheless, the joint actions adopted under the procedure laid down which have not lapsed or been repealed remain in force. Their binding effect for the Member States is limited, however, and they are not subject to judicial review by the Court of Justice.

By contrast, the framework decision is a new legal form provided for by Article 34(2)(b) of the Treaty of Amsterdam, which 'shall be binding upon the Member States as to the result to be achieved' and is subject to judicial review by the Court of Justice to a significant extent.

Legislative logic and circumstances themselves require that all the necessary measures to combat money laundering should have the same legal character, even where they are complementary. It is therefore vital to transfer all the substance of the above Joint Action, which remains in force, to the present Framework Decision.

(Amendment 10)
Article 4, introductory phrase

At least in investigations relating to ***serious*** offences as defined in Article 1(b):	At least in investigations relating to offences as defined in Article 1(b):

Justification:

There should not be any restrictions within the territory of the European Union deriving from the greater or lesser seriousness of a money laundering offence when determining whether or not a Member State takes the necessary steps requested by another Member State to enable it to identify and trace suspected proceeds from crime.

(Amendment 11)
Article 4, second indent

- the optional grounds for refusal in Article 18(2) and (4)(a) and the first of the two optional grounds for refusal in Article 18(3) of the 1990 Convention may not be invoked between Member States of the European Union.	- the optional grounds for refusal in Article 18***(1)(c),(d) and (f),*** (2) and (4)(a) and the first of the two optional grounds for refusal in Article 18(3) of the 1990 Convention may not be invoked between Member States of the European Union.

Justification:

There is no justification in the vital single area of justice in the European Union for it to be possible for the Member States to continue to refuse to cooperate internationally with other Member States in the fight against money laundering in cases covered by the possible grounds for refusal set out in Article 18(1)(c), (d) and (f) of the 1990 Council of Europe Convention No 141.

(Amendment 12)
Article 5a (new)

	1. Member States shall encourage direct contact between investigators, investigating magistrates and prosecutors of Member States making appropriate use of available cooperation arrangements, to ensure that requests for assistance through formal channels are not made unnecessarily. When a formal request is necessary, the requesting State shall ensure that it is properly prepared and meets all the requirements of the requested State. ***2. Where it is not possible to execute a***

request for assistance in the manner expected by the requesting State, the requested State shall endeavour to satisfy the request in some alternative way, after appropriate consultation with the requesting State, while fully respecting national legislation and international obligations.
3. Member States shall submit requests for assistance as soon as the precise nature of the assistance required is identified and, where a request is marked 'urgent` or a deadline is indicated, explain the reasons for the urgency or deadline.

Justification:

The text of this amendment is taken from Article 4 of the Joint Action of 3 December 1998 cited above.

The reasons justifying this amendment are the same as those set out under Amendment 9

These are complementary measures, but they are nonetheless vital to combat money laundering offences throughout EU territory. These provisions should therefore be binding on all the Member States and should be taken from the Joint Action and included in the present Framework Decision.

(Amendment 13)
Article 5b (new)

1. Member States shall ensure that arrangements are in place to acquaint their judiciary with best practice in international cooperation in the identification, tracing, freezing or seizing, and confiscation of instrumentalities and the proceeds from crime.
2. Member States shall ensure that appropriate training, reflecting best practice, is provided to all investigators, investigating magistrates, prosecutors and other officials concerned with international cooperation in asset identification, tracing, freezing or seizing

	and confiscation matters. ***3. The Presidency and interested Member States, in cooperation as appropriate with the European Judicial Network and Europol, shall as necessary arrange seminars for officials from Member States and other practitioners involved to promote and develop best practice and to encourage compatibility of procedures.***

Justification:

The text of this amendment is taken from Article 6 of the Joint Action of 3 December 1998 cited above.

The reasons justifying this amendment are the same as those set out under Amendments 9 and 12.

(Amendment 14)
Article 7

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

Justification:

This amendment can also be justified by the same arguments as those set out in the justifications to Amendments 9 and 12.

(Amendment 15)
Article 8(1)

1. Member States shall adopt the measures necessary to comply with the provisions of this Framework Decision by 31 December ***2001***.	1. Member States shall adopt the measures necessary to comply with the provisions of this Framework Decision by 31 December ***2002***.

Justification:

Bearing in mind that this framework decision will lead to the breaking of significant boundaries of criminal law and entail far-reaching changes in the legal systems of the EU

Member States, it would be prudent to extend the period of adjustment to the end of 2002. This would enable the result to be achieved through a series of small doses, with a time limit set to take account of the difficulties involved in harmonising such disparate legal systems.

(Amendment 16)
Article 8(2)

2. Member States shall forward to the General Secretariat of the Council and to the Commission of the European Communities, by ***the same date,*** the text of the provisions transposing into their national law the obligations arising from 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 ***30 June*** 2002 at the latest, to what extent Member States have taken the necessary measures to comply with this Framework Decision.	2. Member States shall forward to the General Secretariat of the Council and to the Commission of the European Communities, by ***1 March 2002 at the latest***, the text of the provisions transposing into their national law the obligations arising from 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*** 2002 at the latest, to what extent Member States have taken the necessary measures to comply with this Framework Decision.

Justification:

The arguments set out in Amendment 13 also apply to this one. Furthermore, the Council, in a written report to the Commission, has an obligation to ascertain to what extent the Member States have transposed the framework decision into their domestic law within the same time limit as that set for the Member States, i.e. by 31 December 2002, allowing the entire process to be completed by that date.

This will give the Member States a further year in which to adapt and transpose the framework decision, while the procedure as a whole will only be lengthened by six months.

DRAFT LEGISLATIVE RESOLUTION

on the initiative of the French Republic with a view to adopting a Council Framework Decision on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds from crime (10232/2000 – C5-0393/2000 – 2000/0814(CNS))

(Consultation procedure)

The European Parliament,

– having regard to the initiative of the French Republic (10232/2000[1]),

– having regard to Article 34(2)(b) of the EU Treaty,

– having been consulted by the Council pursuant to Article 39(1) of the EU Treaty (C5-0393/2000),

– having regard to Rules 106 and 67 of its Rules of Procedure,

- having regard to the report of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs (A5-0313/2000),

1. Approves the initiative of the French Republic as amended;

2. Calls on the Council to notify Parliament should it intend to depart from the text approved by Parliament;

3. Asks to be consulted again if the Council intends to amend the initiative of the French Republic substantially;

4. Instructs its President to forward its position to the Council and Commission and the Government of the French Republic.

[1] OJ C 243, 24.8.2000, p. 9

EXPLANATORY STATEMENT

I. THE NEED FOR A EUROPEAN AREA OF JUSTICE

1. Introduction

The borders between EU Member States have now, fortunately, been abolished for workers, goods, services and capital.

Unfortunately, however, 15 internal borders continue to exist wherever judges and magistrates, legal proceedings and court decisions are concerned.

Economic Europe has reached a highly advanced stage. Political Europe is still far off but is progressing slowly. Work on judicial Europe has barely commenced.

This situation has two clear consequences:

(a) on the one hand, citizens coming before the courts find themselves in impenetrably complex situations where they are faced with the three-fold uncertainty of the law applicable, the competent jurisdiction and the enforcement in one EU country of a sentence handed down in another;

(b) on the other hand, the continued existence of borders in the areas of justice and home affairs favours cross-border crime: the pursuit of criminals stops at the frontier, letters rogatory run into the sand and proceedings are blocked, while at the same time crime and delinquency are being organising on a wider scale which encompasses the length and breadth of EU territory.

European citizens are finding it increasingly difficult to understand that 15 states, which sometimes consider identical forms of behaviour as crimes and punish them accordingly, should have different criminal law procedures which hinder prosecutions, and that this lack of organisation should favour criminals and penalise citizens.

It is difficult to find any other imbalance to match the gulf between the crucial need for closer judicial cooperation and the timidity of the steps taken to achieve it.

When crime is becoming globalised in parallel with economic globalisation, the response to this phenomenon cannot remain restricted exclusively to the national level.

European citizens can no longer accept the daily evidence of the intolerable contradiction arising from the existence of a single market, without internal borders, divided by the insurmountable barrier of 15 national jurisdictions.

The consequences of the current situation are quite clear: borders have been opened for criminals but remain closed for the bodies responsible for pursuing them.

2. Background

The problems mentioned here stem from a nationalist approach to spheres of competence and reflect differing legal concepts, traditions and systems. For that reason, judicial cooperation has made extremely slow progress, in the field both of civil and criminal law, towards a European judicial area which is still distant but necessary.

(a) **The Treaty of Maastricht**, or Treaty on European Union, which entered into force on 1 November 1993, took a first step in this direction with the adoption of Title VI, relating to 'cooperation in the fields of justice and home affairs', which brought into being what has become known as the 'third pillar of the European Union'.

That title covered various forms of cooperation which had existed among the Member States since 1975.

The former Article K.1 of the Treaty on European Union (Article 29 of the consolidated text) included judicial cooperation in civil and in criminal matters, together with other areas, as matters of common interest for the Member States.

Nevertheless, it can be seen from the start that these two areas are governed by different legal provisions:

- with regard to judicial cooperation in civil matters, the Commission has a right of initiative which it shares with the Member States. Moreover, that area can be 'communitarised' without it being necessary to amend the Treaty, by a unanimous decision of the Council approved by the Member States in accordance with their respective constitutional requirements;

- in the case of judicial cooperation in criminal matters, only the Member States have a right of initiative and no 'communitarisation' is possible.

(b) **The Treaty of Amsterdam**, which entered into force on 1 May 1999, set the European Union the objective of creating an area of freedom, security and justice on a much broader scale than a single European judicial area.

As was stressed in the action plan of the Council and the Commission of 3 December 1998, known as the Vienna action plan, the three notions of freedom, security and justice are closely interlinked: 'Freedom loses much of its meaning if it cannot be enjoyed in a secure environment and with the full backing of a system of justice in which all Union citizens and residents can have confidence. These three inseparable concepts have one common denominator – people - and one cannot be achieved in full without the other two'.

At the same time as proclaiming a set of principles, the Treaty of Amsterdam also defines new procedures affecting the two elements of this judicial area, i.e. judicial cooperation in civil matters and judicial cooperation in criminal matters:

- In view of its cross-border implications, **judicial cooperation in civil matters** now falls within the 'first pillar'.

  It is governed by Title IV of the Treaty establishing the European Community created by the Treaty of Amsterdam. The heading of that title reads 'Visas, asylum, immigration and other policies related to free movement of persons'. Article 65 has the specific purpose of setting out the measures to be adopted in the field of judicial cooperation in civil matters (insofar as necessary for the proper functioning of the internal market). The objectives are as follows: improving and simplifying judicial and extrajudicial documents, resolving conflicts of laws and eliminating obstacles in civil proceedings.

- **Judicial cooperation in criminal matters**, on the other hand, falls within the 'third pillar' and is covered by Title VI of the Treaty on European Union.

  In spite of its restricted scope in this area, the Treaty of Amsterdam has brought about two significant innovations: firstly in setting out the objectives of judicial cooperation in criminal matters, in Article 31, and secondly in strengthening the procedure applicable to judicial cooperation in criminal matters, in Article 34, by recognising the Commission's right of initiative, introducing framework decisions and relaxing the conditions for the entry into force of conventions.

3. The Tampere European Council

On 15 and 16 October 1999 the European Council held a special meeting in the Finnish city of Tampere with the objective of ensuring that an area of freedom, security and justice was in fact created throughout the territory of the European Union as advocated in the Treaty of Amsterdam.

The European Council stated that it 'will place and maintain this objective at the very top of the political agenda'.

Conclusions 28 to 39, brought together in Chapter B, set out the measures to be adopted for the creation of a 'genuine European Area of Justice'. Likewise, conclusions 40 to 58, brought together in Chapter C, point the way towards 'a Union-wide fight against crime'.

It is against this background that the French Council Presidency has presented the initiative under review.

II. THE FIGHT AGAINST CRIME. THE OFFENCE OF MONEY LAUNDERING IN THE EUROPEAN UNION

1. The emergence of European criminal law

As pointed out in conclusion 40 of the Tampere European Council, 'the high level of safety in the area of freedom, security and justice presupposes an efficient and comprehensive approach in the fight against all forms of crime. A balanced development of Union-wide measures against crime should be achieved while protecting the freedom and legal rights of individuals and economic operators'.

Your rapporteur takes the view that it is no exaggeration to state that Tampere saw the emergence of an embryonic future European criminal law. On that occasion, the European Council defined the main features of a well-defined action programme structured around two objectives:

- to define a harmonised and homogeneous set of legislation in the European Union,
- to remove obstacles to cooperation in criminal matters.

With reference to the first objective, Article 31(e) of the EU Treaty makes it possible to define a basic set of minimum rules relating to the constituent elements of criminal acts and to penalties in three categories of criminal behaviour: organised crime, terrorism and illicit drug trafficking.

Continuing along the same lines, the Tampere European Council indicated the direction to be taken in conclusion 48, which states that '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 (money laundering, corruption, Euro counterfeiting), drugs trafficking, trafficking in human beings, particularly exploitation of women, sexual exploitation of children, high-tech crime and environmental crime'.

It is clear, however, that a commitment to such a course of action raises questions as to the necessary role to be played by Europol through police cooperation. At present, Europol is no more than a system by which the police can exchange information. In the near future, however, it could be transformed into an operational instrument for carrying out investigations, as envisaged in Article 30 of the EU Treaty.

In this context, if operational police cooperation were to develop at a faster pace than judicial cooperation in criminal matters, the question would undoubtedly arise as to relations between Europol and the judicial authority. In view of this fairly realistic scenario, the Portuguese Commissioner Antonio Vitorino stressed during the Turku preparatory meeting that the time had come to create a legal counterweight to police cooperation, which is set to increase substantially within the Europol framework.

The second objective is to remove obstacles to cooperation in criminal matters, since in this area procedure is as important as substance. When organised crime presents international features, the speed of cooperation between judges and magistrates is crucial. If this objective is to be achieved, however, a number of serious obstacles need to be overcome which stand in the way of judicial cooperation in criminal matters in the following areas: mutual judicial assistance, extradition and the mutual recognition of judgments.

2. Tackling the offence of money laundering

Within the category of financial crime, it is money laundering which is the most important offence.

The crime of money laundering is a complex one which presupposes another, predicate offence from which proceeds have been obtained illicitly and are to be recycled within the economic system, often through sophisticated financial operations known as laundering.

As the Tampere European Council pointed out in conclusion 51, 'money laundering is at the very heart of organised crime. It should be rooted out wherever it occurs'.

There is now clear agreement at international level that one of the most effective means of combating organised crime consists in seizing and thereby depriving criminals of the proceeds from their illegal activities, particularly where those proceeds are to be 'laundered'.

Money laundering can be combated only through close cooperation at international level, particularly in view of the fact that international crime is increasingly being organised and made more effective at world level.

Even though it is of enormous importance, the fight against money laundering is a recent development which was brought about chiefly to combat drug trafficking.

In tracing the development of the various measures which have been taken at international level in order to tackle money laundering offences, particular attention might be drawn to the following:

(a) The United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, signed in Vienna on 19 December 1988;

(b) The 40 recommendations of the Financial Action Task Force on Money Laundering (FATF). That task force was set up in 1989 at the instigation of the Heads of State and Government of the G-7. Its main objective is to improve the organisation of multilateral cooperation in the fight against money laundering. It includes most of the world's industrialised countries, as well as the European Community;

(c) Council of Europe Convention No 141 on laundering, search, seizure and confiscation of the proceeds from crime of 8 November 1990, which has been ratified by all EU countries with the exception of the Grand Duchy of Luxembourg.

It is also important to establish what activities of commission or omission are treated by the legislator as money laundering offences and consequently punished with the corresponding sanctions.

Likewise, it is vital to define a series of further concepts which are generally closely linked with the above.

We shall start with these terms, following the criteria laid down in the 1990 Council of Europe Convention, which is that generally used at world level:

- 'proceeds' means any economic advantage from criminal offences;
- '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, wholly or in part, to commit a criminal offence;
- 'confiscation' means a penalty or a measure, ordered by a court following proceedings in relation to a criminal offence;
- 'predicate offence' means any criminal offence as a result of which proceeds were generated as defined above.

Money laundering offences are defined in Article 6(1)(a), (b), (c) and (d) of Council of Europe Convention No 141 and in Article 1 of Council Directive 91/308/EEC of 10 June 1991. Their content is based on the 1988 United Nations Convention. Money laundering means the following actions, when committed intentionally:

(a) the conversion or transfer of property, knowing that such property is derived from criminal activity or from participation in such activity, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in such activity to evade the legal consequences of his actions;

(b) the concealment of the nature, source, location, disposition, movement or actual ownership of property or rights with respect to such property, knowing that such property is proceeds from crime;

(c) the acquisition, possession or use of property, knowing, at the time of receipt, that it was derived from criminal activity or from participation in such activities;

(d) participation in, association to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the above actions.

3. The fight against money laundering within the first pillar of the EU

The European Union has embarked on a determined and tough fight against money laundering, particularly following the creation of the single market and liberalisation of the markets in capital and financial services.

This has been a long and complex process, posing problems of comprehension and application, because the Council has not been capable, within the first pillar of the European Union, of inserting any provision establishing money laundering as a criminal offence and providing an overall solution to the problem which would take account of all its facets.

For that reason, the fight against money laundering is governed both by provisions adopted within the first pillar and others adopted within the third pillar.

Within the first EU pillar, Council Directive 91/308/EEC[1] on prevention of the use of the financial system for the purpose of money laundering was adopted on 10 June 1991.

The European Parliament highlighted the shortcomings of the directive in two reports and resolutions[2]. It called for the directive to be amended as a matter of urgency: firstly, by including within its scope all those occupations which were likely to be involved in money laundering; and secondly, by extending the ban on money laundering not only to money derived from illicit drug trafficking but also to all money acquired from activities related to organised crime.

The Commission has now submitted a proposal for an amendment to that directive[3] in which it takes account of Parliament's proposals. Parliament has already adopted its report at first reading under the codecision procedure[4], and the Council common position has not yet been officially received.

The proposal for the amendment of the directive will therefore represent a step in the right direction which responds to some of the demands made by Parliament while taking account of the interests of the public, but it remains a timid and partial response to a problem of enormous proportions which increasingly requires a global solution.

III. THE INITIATIVE OF THE FRENCH REPUBLIC WITH A VIEW TO ADOPTING A COUNCIL FRAMEWORK DECISION ON MONEY LAUNDERING, THE IDENTIFICATION, TRACING, FREEZING, SEIZING AND CONFISCATION OF INSTRUMENTALITIES AND THE PROCEEDS FROM CRIME

1. The package of proposals from the French Presidency constraining the offence of money laundering

Your rapporteur takes the view that the current French Presidency, like the Portuguese Presidency before it, is making a commendable legislative effort with a view to eradicating money laundering, approximating the laws of the Member States in a high-priority area. In doing so, it is complying with the political will expressed in conclusion 48 of the Tampere European Council.

[1] OJ L 166, 28.6.1991, p. 7
[2] Klaus-Heiner Lehne report, A4-0187/96, OJ C 198, 8.7.1996, p. 245 and A4-0093/99, OJ C 175, 21.6.1999, p. 39
[3] COM(1999) 352
[4] Klaus-Heiner Lehne report, A5-0175/00

It might briefly be recalled that, in addition to the initiative under review, Parliament is also being consulted on the following legislative proposals against money laundering, under the third EU pillar:

(a) Initiative of the Portuguese Republic with a view to adopting a Council Act on the drawing-up on the basis of Article 43(1) of the Convention on the Establishment of a European Police Office (Europol Convention) of a Protocol amending Article 2 and the Annex to that Convention[1].

Parliament has appointed Anna Karamanou rapporteur.

The initiative seeks to extend Europol's powers to include the offence of money laundering;

(b) Initiative of the French Republic with a view to adopting a Convention on improving mutual assistance in criminal matters, in particular in the area of combating organised crime, laundering of the proceeds from crime and financial crime[2]. Parliament has appointed Martine Roure rapporteur.

The initiative seeks to improve the Council of Europe Convention on Mutual Assistance in Criminal Matters of 20 April 1959 (Treaty No 30), and the Convention on Mutual Assistance in Criminal Matters between the EU Member States[3].

The intention is to remove a large number of legal obstacles to mutual assistance while providing for the adoption of practical measures designed to strengthen it.

Your rapporteur is aware that, through the present package of legislative measures, the French Presidency is seeking to create a sufficiently extensive legal framework to constrain the offence of money laundering.

On the one hand, it is proposing to extend Europol's powers to include money laundering (Karamanou report), and on the other hand, it is proposing a further series of measures to facilitate international cooperation in the field of mutual assistance in criminal matters (Roure report).

Finally, by transposing part of the content of the Council joint action of 3 December 1998[4] into the proposal for a framework decision under review, it is intended that:

(a) all the Member States should be able to confiscate the proceeds from predicate offences as provided for in Article 2 of Council of Europe Convention No 141 of 8 November 1990;

[1] OJ C 200, 13.7.2000, p. 1
[2] OJ C 243, 24.8.2000, p. 11
[3] OJ C 197, 12.7.2000, p. 1
[4] OJ L 333, 9.12.1998, p. 1

(b) all the Member States should also treat money laundering offences as described in Article 6 of Council of Europe Convention No 141 as criminal offences carrying the appropriate penalties.

Individual states will not be able to formulate or maintain any of the reservations permitted by the Council of Europe Convention in either of the above cases.

2. Assessment of the initiative and the proposed framework decision

Your rapporteur takes a highly critical view of the proposed framework decision in particular and of all the other measures adopted both within the first and the third pillar of the European Union.

First of all, it is to be welcomed that the joint action of 3 December 1998 (a legal form created by the Maastricht Treaty) is to be converted into a framework decision (legal form created by the Treaty of Amsterdam) because the latter obliges all the Member States to produce a result and also allows for judicial review by the Court of Justice.

In contrast, your rapporteur holds serious reservations regarding the fact that only part of the content of the joint action has been transferred to the framework decision, with the result that the measures and actions necessary for the success of the act will be split between two pieces of legislation with differing legal status. Moreover, it is even possible that the joint action will never enter into force. For that reason, your rapporteur would advocate the straightforward transposition of the joint action into the framework decision, with the entire joint action then being repealed. That is the reasoning behind amendments 9, 12, 13 and 14.

The Tampere European Council, following the precedent established by the Vienna European Council, gave a far-sighted assessment of the challenges facing the European Union in the coming years and laid the foundations for the removal of national borders in criminal matters and the creation of a genuine European area of justice in civil and criminal matters. That is the reasoning behind amendments 2, 3 and 4.

Bearing in mind the difficulties involved, the fight against money laundering should not be restricted exclusively to cases where the proceeds to be laundered are derived from serious offences, since this would leave an unjustifiably wide margin of criminal impunity. That is the reasoning behind amendments 4, 5, 6, 7 and 8.

Finally, your rapporteur takes the view that the French Presidency has made laudable efforts to combat money laundering using all the legal weapons at its disposal: penalising the offence of money laundering in all the Member States, seeking to create an adequate framework for cooperation in the area of mutual assistance in criminal matters, granting powers in relation to this type of offence to Europol, etc. These are facts which are beyond dispute and must be seen in a positive light.

At the same time, the facts show that all the legislative measures permitted by the Treaty on European Union and the Treaty establishing the European Community are being taken in the fight against money laundering, and in that connection your rapporteur would draw attention once again to the commendable efforts made by the Portuguese and French Council Presidencies. Nevertheless, this does not stand in the way of the realisation that what the adoption of such a varied panoply of legislation (directives, joint actions, framework decisions, conventions, international conventions) actually reveals is the inescapable need for urgent reform of the Treaties to bring law relating to the administration of justice in civil and criminal matters into the Community framework. In that way, it will be possible to create a genuine single European area of justice which will truly guarantee freedom and security for citizens in the Union.