Fight against organised crime. Framework Decision

2005/0003(CNS) - 24/10/2008 - Final act

PURPOSE: to improve the fight against organised crime.

LEGISLATIVE ACT: Council Framework Decision 2008/841/JHA on the fight against organised crime.

CONTENT: this Framework Decision follows from the Hague Programme which stated that the approximation of substantive criminal law serves the purpose of facilitating mutual recognition of judgments and judicial decisions and police and judicial cooperation in criminal matters and concerns areas of particularly serious crime with cross-border dimensions and that priority should be given to areas of crime that are specifically mentioned in the Treaties. The definition of offences relating to participation in a criminal organisation should therefore be approximated in the Member States. Thus, this Framework Decision encompasses crimes which are typically committed in a criminal organisation. It provides for the imposition of penalties corresponding to the seriousness of those offences, on natural and legal persons who committed them or are responsible for their commission.

Definition: 'criminal organisation' is defined as a structured association of more than two persons acting in concert with a view to committing offences which are punishable by deprivation of liberty or a detention order of a maximum of **at least 4 years or a more serious penalty**, to obtain a financial or other material benefit. Such crimes are intended to include trafficking in weapons, drugs or human beings, economic crimes or money laundering.

Offences relating to participation in a criminal organisation: each Member State shall take the necessary measures to ensure that one or both of the following types of conduct related to a criminal organisation are regarded as offences:

(a) conduct by any person who, with intent and with knowledge of either the aim and general activity of the criminal organisation or its intention to commit the offences in question, actively takes part in the organisation's criminal activities, including the provision of information or material means, the recruitment of new members and all forms of financing of its activities, knowing that such participation will contribute to the achievement of the organisation's criminal activities;

(b) conduct by any person consisting in an agreement with one or more persons that an activity should be pursued, which if carried out, would amount to the commission of offences referred to in the Framework Decision, even if that person does not take part in the actual execution of the activity.

The **penalties for participation** in a criminal organisation are set out in the text. Each Member State shall take the necessary measures to ensure that: the offence mentioned in point (a) is punishable by a maximum term of imprisonment of at least **between two and five years**; or the offence mentioned in point (b) is punishable by the same maximum term of imprisonment as the offence at which the agreement is aimed, or by a maximum term of imprisonment of at least **between two and five years**.

The Decision also provides for lowering of the sentence of those members of criminal organisation who cooperate with the authorities with a view to avoiding criminal activities taking place or assisting in identifying and bringing to justice other offenders.

Member States must **cooperate and consult** each other to coordinate their action and decide which Member State will prosecute the alleged offenders. Investigations into, or prosecution of, offences under this Decision must **not be dependent on a report** or accusation made by a person subjected to the offence, at least as regards acts committed in the territory of the Member State. This provision is made in view of the fact that there are many cases where victims are afraid of reprisals against themselves or their families.

The Framework Decision respects the fundamental rights and principles recognised by the Charter of Fundamental Rights of the European Union, and neither reduces nor restricts national rules relating to fundamental rights or freedoms such as due process, the right to strike and freedom of assembly, of association, of the press and of expression.

Application: Member States must take the necessary measures to comply with the provisions of this Framework Decision before 11 May 2010.

Assessment: the Council shall, before 11 November 2012, assess the extent to which Member States have complied with the provisions of this Framework Decision.

ENTRY INTO FORCE: 11/11/2008.