Fight against organised crime. Framework Decision

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Pending the lifting of some parliamentary and scrutiny reservations, the Council reached a consensus on a Framework Decision on the fight against organised crime.

For the purposes of this Framework Decision, “criminal organisation” means a structured association, established over a period of time, 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 in order to obtain, directly or indirectly, a financial or other material benefit.

Concerning the offences relating to participation in a criminal organisation, each Member State shall take the necessary measures to ensure that either the types of conduct related to a criminal organisation described in a) or the type of conduct described in b) are regarded as offences:

a) conduct by any person who, with intent and with knowledge of either the aim and general activity of the 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 falling within the Framework Decision, even if that person does not take part in the actual execution of the activity.

Regarding penalties, each Member State shall take the necessary measures to ensure that:

- the offence referred to in (a) is punishable by a maximum term of imprisonment of at least between two and five years; or

- that the offence referred to in (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.

Point 3.3.2 of the Hague Programme stated that the approximation of substantive criminal law reserves the same purposes and concerns areas of particular 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 all the Member States. Thus, this Framework Decision encompasses crimes which are typically committed in a criminal organisation. Moreover, penalties corresponding to the seriousness of these offences should be envisaged against natural and legal persons who committed them or are responsible for their commission.