Basic information

2005/0003(CNS) CNS - Consultation procedure JHA act	Procedure completed
Fight against organised crime. Framework Decision Repealing JHA act 98/733/JHA 1997/0913(CNS) **Subject** 7.30.30 Action to combat crime	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
LIBE Civil Liberties, Justice and Home Affairs	NEWTON DUNN Bill (ALDE)	21/02/2005

Committee for opinion	Rapporteur for opinion	Appointed
AFET Foreign Affairs	FOTYGA Anna (UEN)	30/03/2005
JURI Legal Affairs	DI PIETRO Antonio (ALDE)	21/04/2005

Council of the European Union

Council configuration	Meetings	Date
Justice and Home Affairs (JHA)	2807	2007-06-12
Justice and Home Affairs (JHA)	2783	2008-06-05
Justice and Home Affairs (JHA)	2899	2008-10-24
Justice and Home Affairs (JHA)	2725	2006-04-27
Justice and Home Affairs (JHA)	2768	2006-12-04

European Commission

Commission DG	Commissioner
Justice and Consumers	FRATTINI Franco

Key events

Date	Event	Reference	Summary
		COM(2005)0006	Summary

19/01/2005	Legislative proposal published		
12/04/2005	Committee referral announced in Parliament		
26/09/2005	Vote in committee		
29/09/2005	Committee report tabled for plenary, 1st reading/single reading	A6-0277/2005	
25/10/2005	Debate in Parliament		
26/10/2005	Decision by Parliament	T6-0405/2005	Summary
26/10/2005	Results of vote in Parliament		
27/04/2006	Debate in Council		Summary
04/12/2006	Debate in Council		
12/06/2007	Resolution/conclusions adopted by Council		Summary
05/06/2008	Debate in Council		
24/10/2008	Act adopted by Council after consultation of Parliament		
24/10/2008	End of procedure in Parliament		
11/11/2008	Final act published in Official Journal		

Technical information

Procedure reference	2005/0003(CNS)
Procedure type	CNS - Consultation procedure
Procedure subtype	Legislation
Legislative instrument	JHA act
Amendments and repeals	Repealing JHA act 98/733/JHA 1997/0913(CNS)
Legal basis	Treaty on European Union (after Amsterdam) M 029 Treaty on European Union (after Amsterdam) M 031-p1e Treaty on European Union (after Amsterdam) M 034-p2b
Stage reached in procedure	Procedure completed
Committee dossier	LIBE/6/26150

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee opinion	JURI	PE359.879	14/07/2005	
Committee opinion	AFET	PE359.892	01/09/2005	
Amendments tabled in committee		PE362.606	08/09/2005	
Committee report tabled for plenary, 1st reading/single reading		A6-0277/2005	29/09/2005	
		T6-0405/2005		

Text adopted by Parliament, 1st reading/single reading		OJ C 272 09.11.2006, p. 0273-0428 E	26/10/2005	Summary

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2005)0006	19/01/2005	Summary
Commission response to text adopted in plenary	SP(2005)4593	24/11/2005	
Follow-up document	COM(2016)0448	07/07/2016	Summary

Additional information

Source	Document	Date
European Commission	EUR-Lex	

Final act

Decision 2008/0841
OJ L 300 11.11.2008, p. 0042 Summary

Fight against organised crime. Framework Decision

2005/0003(CNS) - 12/06/2007

The Council adopted a series of conclusions setting out the EU priorities for the fight against organised crime based on Europol's 2007 organised crime threat assessment.

Definition of EU priorities to fight organised crime: the Europol Organised Crime Threat Assessment (OCTA) 2007 builds on the assessment of current and expected trends in organised crime (OC) across the EU initiated under the OCTA process in 2006. The findings and conclusions of the OCTA 2007 should therefore be taken into account in national priorities but should also be implemented through enhanced cooperation between Member States, in particular those with shared (regional) problems.

The Council restates its conviction that the fight against organised crime should focus on reducing the threat and the harm caused by it and, in particular, on tackling:

- the obstacles to dismantling OC groups stemming from to their international dimension or influence;
- the level of infiltration of OC into society (inter alia, in the public administration and the economy), especially the misuse of legitimate business structures (and the transport sector in particular);
- the misuse of technology by OC groups;
- The Council finds that based on the OCTA 2007 the following criminal markets should be EU priorities for 2007:
- drug trafficking, especially in synthetic drugs;
- smuggling and trafficking in human beings, especially linked to illegal immigration;
- fraud, especially in the area of highly taxed goods and Value Added Tax carousels;
- Euro counterfeiting;
- commodity counterfeiting and intellectual property theft;
- money laundering.

The priorities set out above have to be understood as areas in which the EU, through its Member States, institutions and bodies, should (increasingly) coordinate and enhance its action, which should be reactive, but also preventive and proactive. Together, these concerted activities will ensure an in-depth understanding and provide tools for enhanced targeting of OC impacting on the EU.

Law enforcement action, in particular investigations and prosecutions, should, where possible, mainly focus on the upper levels of the organised crime groups, including logistics, financing, assets and those who facilitate the activities of the criminal organisation. Member States are, therefore, invited to increase their efforts in the financial aspects of investigations and prosecutions, for example as regards the seizure of assets.

For Member States to mutually benefit from one another's efforts, more information on the outcomes of and difficulties in such investigations and prosecutions should be communicated at an early stage to Europol, Eurojust or OLAF, so that a stronger EU position can be taken.

Successful law enforcement action against organised crime should focus on facilitating factors (such as document forgery, technology, and the misuse of legitimate business structures, black markets and, in particular, of the transport sector). Enhanced cooperation with the private sector is therefore required, both for establishing preventive mechanisms (through consultation on regulations, products, and the use of technology) and with a view to improving crime detection and investigation.

The Council gives an outline of how the EU priorities should be implemented as well as the methodology used which are detailed in a separate annex.

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.

Fight against organised crime. Framework Decision

2005/0003(CNS) - 19/01/2005 - Legislative proposal

PURPOSE : to improve the fight against organised crime.

PROPOSED ACT : Council Framework Decision.

CONTENT : the EU has taken the lead in the fight against organised crime since the Treaty of Amsterdam and the Amsterdam European Council of 16 and 17 June 1997, which adopted the first action plan to combat organised crime. In 1998, the Council adopted a Joint Action on participation in a criminal organization. However, it is now necessary to provide the Union with a more powerful and ambitious instrument to approximate more closely Member States' criminal legislation and improve cooperation in order to combat organised crime more effectively, inter alia by harmonizing the minimum thresholds of criminal penalties.

Moreover, as was stated in the Hague programme, the citizens of Europe rightly expect the European Union to take a more effective, joint approach to cross-border problems such as organised crime. With the adoption of a legislative proposal and a strategy document the European Commission has done precisely that and stepped up the fight against crime, be it organised or unorganised.

This particular proposal for a Council Framework Decision aims at harmonizing the definition of what constitutes a criminal organisation. Such an organisation is understood to be a structured association of at least two persons who, for material gain, commit serious crimes punishable with at least four years of imprisonment, such as trafficking in weapons, drugs or human beings, economic crimes or money laundering.

It also proposes to punish leaders of such organisations with an imprisonment of at least ten years and participation, including supportive activities for the organisation, with five years of imprisonment.

The proposal also envisages lowering of the sentence of those members of criminal organisation who cooperate with the authorities with a view to avoiding criminal activities to take place or assist in identifying and bringing to justice other offenders.

The proposal also stipulates that Member States must cooperate and consult each other to coordinate

their action and decide which Member State will prosecute the alleged offenders.

As regards the protection of and assistance to victims, the proposal highlights that EU attaches particular importance to protecting and assisting victims. In cases involving organised crime, and in particular trafficking in human beings, provision must be made to ensure that a complaint or statement by the victim is not necessary for initiating prosecution. There are many cases where victims are afraid of reprisals by mafia-type organisations against themselves or their families.

Lastly, it should be noted that the new text also takes account of parameters that have changed since 1998:

- the Treaty of Amsterdam, which succeeded the Maastricht Treaty, introduced new types of legal instruments, more effective than the "joint action"; the framework decision is now the proper instrument for approximating criminal law in the Union in this area;

- the United Nations Convention against Transnational Organised Crime, known as the "Palermo Convention", now provides an international framework which details the offences connected with participation in an organised criminal group; the Convention was approved by the European Community on 21 May 2004;

- Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism is a reference point which must be taken into account; it defines a "terrorist group" on the basis of the definition of "criminal organisation" in Joint Action 1998/733/JHA, but it is a more comprehensive instrument.

Fight against organised crime. Framework Decision

2005/0003(CNS) - 27/04/2006

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.

Fight against organised crime. Framework Decision

2005/0003(CNS) - 26/10/2005 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted a resolution drafted by Bill Newton Dunn (ALDE, UK) and made some amendments to the Commission's proposal:

-A new article states that Member States shall ensure that Europol is strengthened in its role as a channel of information to combat crime, in order to enable it to perform the task of supplying Member States with information and intelligence making for more effective results in terms of preventing and fighting organised crime. Europol may not be strengthened unless it becomes a European Union body subject to democratic control by the European Parliament.

-Each Member State shall establish a Serious and Organised Crime Unit and an Asset Recovery Unit, to ensure coordination at national level and to act as a single contact point.

-There are new provisions on witness protection and police protection: each Member State must adopt the necessary measures to ensure that persons who supply information useful for the prevention, detection and/or punishment of crimes committed by criminal organisations, whether they are witnesses or offenders are adequately protected against the risks of retaliation, threats or direct intimidation targeting themselves or their relatives.

-Member States will collect statistics on the offences referred to in the legislation and forward those statistics to the Commission, which will draw up harmonised and comparable statistics as from 2006.

-Each Member State must take measures to ensure that, in addition to the penalties already laid down, persons found guilty of offences may also be made subject to a prescribed list of penalties such as the seizure of articles which were used to commit the offence concerned, publication of judicial decisions, and disqualification from public office.

The offences referred to in the legislation must be punishable by a term of imprisonment longer than those already prescribed where the aim of the criminal organisation is terrorism, or the criminal organisation organises trafficking in human beings, or where the criminal organisation is of the mafia type, i.e. it makes use of the intimidation inherent in bonds of association and of the power over others and code of silence which arise from that intimidation for the purposes of committing offences, acquiring directly or indirectly the power to manage or control economic activities, licences, authorisations, public contracts and services, gaining unjust enrichment or advantage for itself or others, impeding or obstructing the free exercise of the right to vote, or procuring votes for its members or for others in elections.

Fight against organised crime. Framework Decision

2005/0003(CNS) - 07/07/2016 - Follow-up document

The Commission presented a report based on based on Article 10 of Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime.

The main focus of the Framework Decision is the **criminalisation of offences relating to participation in a criminal organisation (Article 2 of the Framework Decision)** based on the definitions of "criminal organisation" and "structured association".

The scope of this instrument should therefore encompass offences which are typically committed by a criminal organisation. It should also provide for penalties corresponding to the seriousness of those offences committed by natural and legal persons.

National provisions in relation to the Framework Decision are assessed separately for the Member States that base their systems on a self-standing offence in relation to Article 2 and those that take different approaches. The Framework Decision is not applicable to the UK as of 1 December 2014, because it exercised its right to opt out of this legal instrument.

An overview of the Framework Decision's transposition in the Member States points to a **number of divergences**, which can to a large extent be attributed to differences in the Member States' legal traditions.

Offences relating to participation in a criminal organisation: the Commission is of the opinion that the Framework Decision does not achieve the necessary minimum degree of approximation as regards directing or participating in a criminal organisation on the basis of a single concept of such an organisation.

As such, the Commission considers that the Framework Decision enables the Member States not to introduce the concept of criminal organisation but to continue to apply existing national criminal law by having recourse to general rules on participation in and preparation of specific offences. This may have the effect of creating additional divergences in the Framework Decision's practical implementation.

While most Member States have adopted self-standing offences in relation to participation in a criminal organisation in accordance with Article 2, two Member States have not done so (Denmark and Sweden).

All Member States that provide for a self-standing offence cover **participation** in a criminal organisation (Article 2(a)), while a few of them cover additionally the offence of conspiracy in organised crime (Article 2(b)).

No Member State has opted for criminalisation of only the offence of conspiracy in organised crime (Article 2(b)).

Many Member States have gone beyond the minimum requirements: some of them make the national provisions broader by not referring to all elements of the definition of organised crime, e.g. they do not mention the criterion of benefit or scope of predicate offences. As a result the national legal regime applies to a wider range of offences, e.g. also to offences which are not necessarily committed for benefit (or where at least the benefit does not need to be proven) or cases where the scope is extended beyond the serious offences.

In addition to the offences under Article 2, many Member States **provide for measures that are not covered at all by the Framework Decision**, e.g. parallel offences tackling specific types of organised groups defined through their objective or modus operandi.

Liability of legal persons (Article 5): all Member States (with the exception of Cyprus) make statutory provision for criminal or non-criminal liability of legal persons involved in offences relating to participation in a criminal organisation.

All Member States have relevant provisions in this regard but only fifteen of them expressly refer to liability for lack of supervision or control by a person that has made possible the commission of the offence in question.

All Member States have definitions of a legal person and they acknowledge that liability of legal persons under paragraphs 1 and 2 is without prejudice to criminal proceedings against natural persons who are perpetrators of, or accessories to, any of the offences.

Penalties: the report notes that the majority of Member States go beyond their basic obligations and provide higher penalties for aggravated conduct not regulated by the Framework Decision in relation to the main offence depending on the role of the person in an organised criminal group.

According to Article 3(2), Member States should ensure that commission of a predicate offence in the framework of organised crime may be regarded as an aggravating circumstance within their national systems. In general, all Member States' national systems are characterised by the principle of **individualised penalties**, meaning that each criminal penalty may potentially be aggravated or mitigated according to individual circumstances decided on a case-to-case basis.

The **optional provisions** have been largely transposed:

- all Member States provide for **circumstances in relation to exemption from criminal responsibility or penalty** or reduction of penalty in mitigating circumstances;
- all Member States (with the exception of Cyprus) provide for **criminal or non-criminal fines in relation to conduct of legal persons** as regards offences. All but five Member States also provide for measures other than fines, for instance: exclusion from entitlement to public benefits or aid or temporary or permanent disqualification from the practice of commercial activities.

Conclusion: the Commission considers that there are a number of issues that may require additional clarification in relation to the correct implementation of the Framework Decision.

Those issues relate mostly to: (i) the potentially restricted scope of application of the definition of a criminal organisation and; (ii) issues concerning the correct transposition of Article 5 on the liability of legal persons.

In line with the European Agenda on Security, the Commission will provide support to Member States to ensure a satisfactory level of implementation of the Framework Decision. The Commission will also **continue to monitor the compliance of the national measures** with the EU instrument.

The assessment will take into account also whether the issues identified impact on the proper implementation of the Framework Decision. The Commission will engage in **bilateral contacts with the Member States concerned**, and, where necessary, will make use of its enforcement powers under the Treaties. This report will also contribute to the assessment of the necessity and the opportunity to review the Framework Decision.