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NOTE

From: Dr Sebastian Jeckel, Permanent Representation of the Federal Republic of Germany to the European Union

On: 11 September 2015

To: Ms Christine Roger, Director General, Council of the European Union

Subject: Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime

- Notification by the Federal Republic of Germany

Dear Director General,

The provisions of Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime (OJ L 300, 11.11.2008, p. 42) are transposed by the national provisions set out in Annex 1 and the provisions listed in Annex 2, for which the relevant wording of the respective legal texts is notified separately¹.

¹ Note from the Secretariat: this text is not attached to the current document, but is available upon request.

In addition, the following information is brought to your attention:

Article 1 (Definitions):

The term 'criminal organisation' in Article 1 of the Framework Decision does not fully correspond to the term 'organisation' in Section 129 of the German Criminal Code (*Strafgesetzbuch*, StGB - Forming criminal organisations), which essentially transposes the Framework Decision. In accordance with the case law on Section 129 StGB, an organisation within the meaning of this provision is understood to mean exclusively

- a structured organisation, established over a period of time,
- of at least three persons,
- who, by subordinating individual will to the collective will,
- pursue common goals and
- whose interactions are such that they consider themselves to be a unified group.

This definition means that, for example, hierarchically organised groups which merely implement the will of an authoritarian leader without a 'group identity' are not covered by Section 129 StGB. Also in accordance with the case law, it sets higher requirements regarding the degree of organisation than the Framework Decision, which states explicitly that an organisation does not need to have formally defined roles for its members, continuity of its membership, or a developed structure. The wording of Section 129 StGB does not stand in the way of a broader definition. However, in view of the settled case law of the Federal Court of Justice (which, with reference to the Framework Decision, has seen a need for legislative action), it is proposed that the term 'criminal organisation' in Section 129 StGB be explicitly adapted by law to the definition in Article 1 of the Framework Decision.

Article 2 (Offences relating to participation in a criminal organisation):

In Section 129 StGB, Germany transposes point (a) of Article 2 of the Framework Decision in such a way that transposition of point (b) of Article 2 is not necessary.

Article 3(2) (Penalties):

For many acts that are typical of organised crime, the 'organised' manner in which the act is committed within the framework of a 'gang' generally results in a higher range of penalties. An overview of elements of offences relevant in this context is therefore also enclosed (Annex 2). The wording of the relevant legal texts is notified separately.

Article 7(3) (Jurisdiction and coordination of prosecution):

Article 7(3) of the Framework Decision ('does not as yet extradite or surrender its own nationals') no longer applies to Germany in view of paragraphs 1 and 2 of Section 80 of the German Act on International Cooperation in Criminal Matters (*Gesetz über die internationale Rechtshilfe in Strafsachen*, IRG).

(Complimentary close)

(s.) Sebastian Jeckel