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**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND  
THE COUNCIL**

**based on Article 10 of Council Framework Decision 2008/841/JHA of 24 October 2008  
on the fight against organised crime**

# REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

## based on Article 10 of Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime

### 1. INTRODUCTION

#### 1.1. Background

The first steps towards criminalisation of offences linked to a criminal organisation were taken in the European Union in 1998 with the adoption of Joint Action 98/733/JHA making it a criminal offence to participate in a criminal organisation in the Member States of the European Union.<sup>1</sup> This instrument, adopted by the Council on the basis of Article K.3 of the Treaty on European Union, introduced a definition of organised crime in international law.

This was followed by the United Nations Convention against Transnational Organised Crime (UNTOC), adopted by General Assembly resolution 55/25 of 15 November 2000, which became the main international instrument in the fight against transnational organised crime. The European Union (previously European Community) participated in the negotiations on the Convention, signed it and is a Party to the Convention.<sup>2</sup>

On 19 January 2005 the Commission put forward a proposal for a framework decision on the fight against organised crime.<sup>3</sup> It sought to build on the achievements of both the Joint Action 98/733/JHA and UNTOC by providing for greater consistency of approximation in order to tackle organised crime more effectively at EU level.

The outcome of the negotiations was less ambitious than the initial proposal. The Commission, backed by France and Italy, decided to issue a declaration<sup>4</sup> questioning the added value of the instrument from the point of view of achieving the necessary minimum degree of approximation.

#### 1.2. Main elements and purpose of the Framework Decision

Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime points out in its preamble that the European Union's objective is to improve

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<sup>1</sup> OJ L 351 of 29/12/1998.

<sup>2</sup> Council Decision 2004/579/EC, OJ L 261, 6.8.2004, p. 69.

<sup>3</sup> 2005/0003 (CNS) which lead to the adoption of the Council Framework Decision 2008/841/JHA.

<sup>4</sup> *'The Commission considers that the Framework Decision on the fight against organised crime fails to achieve the objective sought by the Commission in relation to Joint Action 98/733/JHA on making it a criminal offence to participate in a criminal organisation in the Member States of the European Union, and in relation to the United Nations Convention Against Transnational Organised Crime, adopted on 15 November 2000, to which the Community has been a party since 29 April 2004. The Framework Decision does not achieve the minimum degree of approximation of acts of directing or participating in a criminal organisation on the basis of a single concept of such an organisation, as proposed by the Commission and as already adopted in Framework Decision 2002/475/JHA on the fight against terrorism. Furthermore, the Framework Decision enables 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. The Commission is therefore obliged to note that the Framework Decision does not achieve the objective of the approximation of legislation on the fight against transnational organised crime as provided for in the Hague Programme.'*

the common capability of the Union and the Member States for the purpose, among others, of combating cross-border organised crime.

This objective under the EU policies of judicial cooperation in criminal matters and police cooperation is to be pursued by, in particular, the approximation of legislation. 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.

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 set out in Article 1.

### **1.3. Purpose of this report and method of assessment**

The European Agenda on Security,<sup>5</sup> adopted by the European Commission on 28 April 2015, highlights the need to help Member States develop greater mutual trust, make full use of existing tools for sharing information and foster cross-border operational cooperation between competent authorities. This is to be achieved through better application and implementation of existing EU legal instruments. For this reason the Commission, acting as guardian of the Treaties, monitors the transposition of the relevant EU instruments.

On the basis of Article 10 of the Framework Decision<sup>6</sup>, the Member States had to adopt the necessary implementing measures and notify them to both the Council and the Commission by 11 May 2010. The Commission was to draw up a report based on this information. The Council should then have assessed, by 11 November 2012, whether Member States had taken the necessary measures to comply with the Framework Decision.

By the time of the deadline for transposition, namely 11 May 2010, only four Member States (BE, CY, IE and NL) had provided the Commission with their notifications. Other Member States communicated their transposition measures after that date.

The Framework Decision is not applicable to the UK as of 1 December 2014, because it exercised its right under Article 10(4) of Protocol 36 annexed to the Treaties to opt out of this legal instrument. Although the UK has in the past enacted national legislation implementing the Framework Decision and notified it to the Commission, the report does not cover this Member State. Denmark is bound by the Framework Decision under Article 2 of Protocol No. 22 on the position of Denmark as the Framework Decision was adopted before the entry into force of the Treaty of Lisbon.

The description and analysis in this report are primarily based on the information that Member States have provided, supplemented by publicly available information and findings of an external study<sup>7</sup>. Following the expiry of the transitional period under Article 10(3) of Protocol 36 to the Treaties on 1 December 2014, the Commission requested that Member States notify national transposition measures for instruments under the former third pillar *acquis*, including this Framework Decision, through the MNE database ('Mesures Nationales d'Éxecution'). At the time of writing, all Member States have notified such measures.

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<sup>5</sup> COM(2015) 185 final.

<sup>6</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1455280270499&uri=CELEX:32008F0841>

<sup>7</sup> [http://ec.europa.eu/dgs/home-affairs/e-library/docs/20150312\\_1\\_amoc\\_report\\_020315\\_0\\_220\\_part\\_1\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/e-library/docs/20150312_1_amoc_report_020315_0_220_part_1_en.pdf)

The report focuses on analysis of Articles 1 to 8. It does not discuss Articles 9 to 12, as these provisions do not require implementation. The assessment criteria adopted by the Commission for this report are the general criteria adopted in 2001 relevant to assess the implementation of framework decisions (practical effectiveness, clarity and legal certainty, full application and compliance with the time limit for transposition).<sup>8</sup> Secondly, criteria specific to this Framework Decision are also used, further details of which are provided in the following analysis of the individual provisions.

For consistency's sake, 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.

## 2. ASSESSMENT

### 2.1. Assessment of the relevant national provisions of Member States that base their systems on a self-standing offence

The overview provided below does not cover DK, SE and UK. Whenever the report mentions 'all Member States', it therefore refers only to the remaining 25 Member States.

#### 2.1.1. Definitions (Article 1)

Article 1 sets out two definitions that are relevant for defining the scope of the Framework Decision, namely the definition of a criminal organisation and of a structured association.

As regards the **definition of structured association** (*'an association that is not randomly formed for the immediate commission of an offence, nor does it need to have formally defined roles for its members, continuity of its membership, or a developed structure'*), three Member States (BG, HR, IE) have followed the Framework Decision's wording while four others (CZ, EE, LT, ES) mention some further elements, mostly the division of tasks or functions in the criminal organisation. A group of seven Member States (BE, CY, FI, EL, LU, RO, SK) indicate that the association is to be structured and eleven Member States (AT, DE, FR, HU, IT, LV, MT, NL, PL, PT, SI) do not make any reference to the definition of structured association.

Eleven Member States (AT, BE, BG, FI, EL, HU, LU, PT, RO, SK, ES) refer to the **criterion of continuity** (*'established over a period of time'*). In EE and LT national provisions refer to a *permanent* organisation, which potentially restricts the scope of application of this provision by excluding non-permanent criminal organisations. The remaining Member States (HR, CY, CZ, DE, FR, IE, IT, LV, MT, NL, PL, SI) do not mention this element at all in their national legislation.

Regarding **membership** (*'more than two persons acting in concert'*), the majority of the Member States (AT, BE, BG, HR, CY, EE, FI, EL, HU, IE, IT, LT, LU, PT, RO, SK, ES) refer directly to the minimum of three persons. LV restricts the scope of application to groups formed by at least five persons. The legislation of CZ refers to a minimum of two persons acting in concert while six Member States (DE, FR, MT, NL, PL and SI) do not refer to this criterion in their national laws.

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<sup>8</sup> COM(2001) 771, 13.12.2001, point 1.2.2.

Only three Member States (BE, LU, SK) refer to the **criterion of benefit** (*‘to obtain, directly or indirectly, a financial or other material benefit’*) in their national legislation. This means that for all other Member States the definition is broader, opening the scope of application of this provision also to criminal organisations that are not necessarily profit-driven.

With regard to **predicate offences** (*‘offences which are punishable by deprivation of liberty or a detention order of a maximum of at least four years or a more serious penalty’*), the lowest upper thresholds of imprisonment according to national law are the following:

- at least 3 years in three Member States (BE, CY, EE)
- more than 3 years in five Member States (AT, BG, HR, LT, SI);
- at least 4 years in four Member States (FI, IE, LU, MT); FI additionally extended the scope of application to two further offences for which the maximum penalty is less than 4 years;
- at least 5 years in two Member States (FR and HU);
- more than 5 years in one Member State (SK);
- no indication of the level of predicate offences in eight Member States (CZ, DE, IT, NL, PL, PT, RO, ES), which means that the scope of application is extended to all criminal offences; DE restricts the scope by excluding some specific offences committed against the democratic rule of law;
- a list of serious offences is regarded as predicate in EL and LV; this list does not cover all offences with the upper threshold of at least 4 years’ imprisonment in LV and it is not clear whether or not it does so in EL.

#### 2.1.2. *Offences relating to participation in a criminal organisation (Article 2)*

The Framework Decision deals mainly with the criminalisation of conduct relating to participation in a criminal organisation. Article 2 obliges Member States to ensure that at least one of the following types of conduct is criminalised under national legislation:

*(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 Article 1, even if that person does not take part in the actual execution of the activity.*

The extent of transposition of Article 2 is as follows:

- **Four Member States (BG, HR, EL, MT) envisage both offences (Article 2(a) and (b)).**
- **Twenty one Member States (AT, BE, CY, CZ, DE, EE, FI, FR, HU, IE, IT, LV, LT, LU, NL, PL, PT, RO, SK, SI, ES) cover only Article 2(a)**, thus making it a criminal offence to participate in a criminal organisation. The national legislation of BE restricts the application of the offence of participation in a criminal organisation to circumstances involving use of intimidation, threat, violence, fraud, corruption or commercial structures.

### Concerning the transposition of **Article 2(a)**:

- Six Member States (BG, FR, LT, LV, PL, SI) refer generally to participation/involvement without elaborating on what kind of activities are meant (commission of criminal offences or other activities not necessarily of a criminal nature).
- Eight Member States (BE, CY, CZ, IE, IT, LU, RO, SK) refer explicitly in the definition to the inclusion of ‘other activities’ in the scope of conduct constituting participation or have made it punishable to take part in as well as to support a criminal organisation.
- A further eight Member States (AT, DE, EE, EL, ES, MT, NL, PT) mention one or more specific cases of ‘other activities’ included in the Framework Decision (such as provision of information or material means, recruitment of new members, and financing the activities of the criminal organisation).
- Three Member States (HU, HR, FI) restrict explicitly the scope of application, excluding the actual commission of any predicate offences (HR) or those equally severe or more severe than the self-standing offence (FI), or restricting it only to preparatory conduct (HU).
- All but four Member States (CY, FR, HU, IE) criminalise some of the more serious forms of participation in a criminal organisation, such as establishing, directing, organising, promoting, etc.
- Nine Member States (AT, BE, HR, CY, EL, FI, IE, LU, SK) include explicit references to the intent and/or knowledge of the offender regarding the aim and general activity of the criminal organisation and/or the commission of predicate offences.

### In relation to the offence under **Article 2(b)**:

- Two Member States (EL, MT) criminalise conspiracy with regard to any criminal offence (except those liable to punishment differing from imprisonment, as well as those under the Press Act in the case of MT). EL excludes predicate offences falling within the offence of participation in a criminal organisation but does include misdemeanours if the offenders’ purpose is to achieve financial or other material gain or to attack a person’s life, physical integrity or reproductive freedom unless punishable with less than one year of imprisonment.
- In the case of two Member States (BG, HR), the scope of predicate offences is restricted to those punishable with more than 3 years of imprisonment. One further restriction with regard to BG concerns the purpose of material gain or gaining illicit influence over bodies of state or local government.

#### 2.1.3. *Liability of legal persons (Article 5)*

This provision is a standard clause present in several EU instruments. **All Member States** (with the exception of CY) **make statutory provision for criminal or non-criminal liability of legal persons** involved in offences relating to participation in a criminal organisation (Article 2). CY ratified the UNTOC Convention but did not transpose the relevant provisions into its national legal order.

The first paragraph covers liability for offences under Article 2 **committed for the benefit of a legal person by any person representing it, taking decisions on its behalf or exercising control within the legal person**. All Member States have relevant provisions in this regard but only fifteen of them (AT, CZ, DE, FI, EL, HU, IE, IT, LV, LT, PL, PT, SK, SI, ES) expressly refer to **liability for lack of supervision or control** by a person referred to in

paragraph 1 that has made possible the commission of the offence in question (Article 5(2)). In some Member States, such a possibility may derive from flexible reading of the basic provisions covering conduct of legal persons consisting not only in action but also in omission, e.g. in NL and BE the Supreme Court has confirmed such an interpretation.

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 referred to in Article 2.

#### 2.1.4. Penalties (Articles 3, 4 and 6)

##### 2.1.4.1. Penalties for natural persons (Article 3)

According to Article 3(1), Member States should ensure that the offences referred to in Article 2 are punishable by a maximum term of imprisonment of at least 2 years or, in the case of agreement to conspire in organised crime, by the same maximum term of imprisonment as the offence at which the agreement is aimed.

In relation to the **offence of participation in a criminal organisation (Article 2(a))**, the thresholds of imprisonment for the basic offence according to national legislation are as follows:

- Up to 2 years in FI
- Up to 3 years in AT and HR
- From 1 to 3 years in BE, LU and ES
- Up to 5 years in DE and FR
- From 1 to 5 years in HU, IT, PT and RO
- From 3 months to 5 years in PL and SI
- Up to 6 years in NL
- From 1 to 6 years in BG
- From 2 to 7 years in MT
- Up to 10 years in CY and EL
- From 2 to 10 years in CZ
- From 5 to 10 years in SK
- From 3 to 12 years in EE
- Up to 15 years in IE
- From 3 to 15 years in LT
- From 8 to 17 years in LV.

Only four Member States (BG, HR, EL, MT) envisage additionally the offence of **conspiracy in organised crime in relation to Article 2(b)**. According to MT national legislation, the penalty depends on the offence at which the agreement is aimed. BG sets the maximum penalty threshold at 6 years, HR up to 3 years. In EL the offence of conspiracy in organised crime is punishable by a minimum of 6 months' imprisonment (minimum 3 months if the offence is a misdemeanour punishable by a minimum of 1 year's imprisonment).

It needs to be underlined 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 of Article 2:



- depending on the role of the person in an organised criminal group, e.g. founders, decision-makers or leaders of the criminal organisation (BE, BG, DE, HR, EE, EL, IT, LT, LU, LV, MT, NL, PL, PT, SI, ES);
- due to the seriousness of the predicate offence (CZ, DE, FR, IT, PL, RO, ES);
- due to specific features such as use of specific tools or dangerous materials (EL, IT, LT, PL);
- due to a high number of persons participating in a criminal organisation (IT, MT).

#### 2.1.4.2. Aggravating circumstances (Article 3(2))

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.** This covers also the specific case of commission of an offence in the framework of a criminal organisation.

In terms of the legal provisions specific to aggravation, the following approaches have been identified:

- The national legislation in IE makes the commission of an offence in the framework of a criminal organisation, as an aggravation, applicable only to offences above the threshold of the maximum term of 4 years, namely the exact minimum scope required by Article 3(2).
- In SI, aggravation applies to offences above the threshold of 3 years' imprisonment.
- In the national legislation of six Member States (HR, CZ, FI, HU, LT, PL), the commission of an offence in the framework of a criminal organisation is a general aggravating circumstance for any criminal offence (not only serious offences).
- Eleven Member States (AT, BE, BG, CY, DE, IT, LV, MT, PT, SK, ES) provide a specific reference in their national legislation to aggravation in respect of a list of the most serious predicate offences due to the fact that they were committed in the framework of a criminal organisation. It is not clear if the list in question covers all offences punishable by deprivation of liberty of at least 4 years.
- The national legislation of six Member States (EE, EL, FR, LU, NL, RO) does not mention expressly the commission of an offence in the framework of a criminal organisation as an aggravating circumstance.

#### 2.1.4.3. Possibility for reduction of the penalty or exemption of the offender from the penalty (Article 4)

Despite the optional nature of Article 4 (*'Each Member State may ...'*), **all Member States provide for circumstances in relation to exemption from criminal responsibility or penalty or reduction of penalty in mitigating circumstances applicable to offences under Article 2.**

#### 2.1.4.4. Penalties for legal persons (Article 6(1) and (2))

In accordance with Article 6(1), the conduct of a legal person pursuant to Article 5(1) (cases of leading position based on power of representation, authority to take decisions or exercise

control) should entail criminal or non-criminal fines and may include other penalties such as those listed in that provision. In relation to Article 5(2), namely cases of lack of supervision or control, Article 6(2) indicates only the obligation to provide for penalties or measures which are effective, proportionate and dissuasive.

**All Member States (with the exception of CY, which does not indicate any specific fines in relation to legal persons) provide for criminal or non-criminal fines in relation to conduct of legal persons as regards offences under Article 2.**

In relation to the optional ‘other penalties’, including the non-exhaustive list set out in Article 6(1), **all but five Member States (AT, DE, EE, FI, IE) also provide for measures other than fines:**

- (a) *exclusion from entitlement to public benefits or aid* was transposed by fourteen Member States (HR, CZ, FR, EL, HU, IT, LU, LV, MT, PL, PT, RO, SI, ES);
- (b) *temporary or permanent disqualification from the practice of commercial activities* was transposed by fifteen Member States (BE, HR, CZ, FR, EL, HU, IT, LT, LV, MT, PL, PT, RO, SI, ES);
- (c) *placing under judicial supervision* was transposed by six Member States: (FR, IT, MT, PT, RO, ES);
- (d) *judicial winding-up* was transposed by thirteen Member States (BE, HR, CZ, FR, HU, LT, LU, LV, MT, PT, RO, SI, ES);
- (e) *temporary or permanent closure of establishments which have been used for committing the offence* was transposed by seven Member States (BE, FR, LT, MT, PT, RO, ES).

Additionally, sixteen Member States (BE, BG, HR, CZ, FR, HU, IT, LT, LV, LU, NL, PL, PT, RO, SK, SI) provide for measures not listed in Article 6(1), relating mainly to confiscation and the publication of the judgment.

#### 2.1.5. *Jurisdiction and coordination of prosecution (Article 7)*

Article 7 imposes on Member States an obligation to ensure that their jurisdictions cover at least the specified cases in relation to the offences referred to in Article 2.

The first criterion is obligatory and refers to acts committed in whole or in part within a Member State’s territory, wherever the criminal organisation is based or pursues its criminal activities. **All Member States comply with this provision embodying the basic principle of territoriality, which is extended in most cases to ships and vessels.**

**The second criterion, namely jurisdiction over acts committed by their nationals abroad, is also embodied by all Member States.** This fact satisfies simultaneously for all Member States the requirement of Article 7(3) that imposes an obligation to either establish jurisdiction over nationals for offences committed abroad or to extradite them.

The third criterion makes reference to **acts committed for the benefit of a legal person established in the territory of the Member State.** A clear reference to this provision is present in the national legislation of four Member States (CZ, IE, IT, NL).

With regard to restricting the jurisdiction of the latter two situations (Article 7(1)(b) and (c)) to specific circumstances applying when the offences are committed outside their territory, **no Member State has taken such an approach.**

Article 7(2) refers to the obligation of cooperation between the Member States in cross-border cases (conflicts of jurisdiction). **All Member States have national legislative instruments in relation to coordination in the fight against serious cross-border crime with the possibility to use the support of Eurojust to strengthen the coordination and cooperation between national authorities.** The task of Eurojust to support the Member States in this respect is also part of the currently negotiated proposal for a Eurojust Regulation on the EU Agency for Criminal Justice Cooperation<sup>9</sup>.

#### 2.1.6. *Absence of requirement of a report or accusation by victims (Article 8)*

Article 8 of the Framework Decision obliges the Member States to ensure that investigations into, or prosecution of, offences referred to in Article 2 are not 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.

**The *ex officio* proceedings in cases of prosecution of the offences referred to in Article 2 are the principle in all Member States.** This either stems directly from the national legislation or is deduced from the fact that in certain Member States there are no conditions rendering prosecution dependent on such a report or accusation.

### 2.2. **Assessment of the relevant national provisions of Member States that do not base their systems on a self-standing offence**

#### 2.2.1. *Denmark's transposition of the Framework Decision*

DK national legislation does not contain a self-standing offence in relation to Article 2 or the related definitions of Article 1.

It criminalises generally any attempt to commit criminal offences and different forms of participation in those offences, while penalties depend on specific conduct. The general aggravating circumstance based on the commission of an offence by more than one person acting in association is applicable to all criminal offences. DK applies wide-ranging mitigating circumstances to all criminal offences and has a criminal law system based on the horizontal liability of legal persons for all offences, with the relevant fines. Also, the general rules on jurisdiction cover the principle of territoriality and jurisdiction over nationals for offences committed abroad. *Ex officio* proceedings without any report or accusation of victims are a general rule of criminal proceedings in DK.

#### 2.2.2. *Sweden's transposition of the Framework Decision*

SE national legislation does not contain a self-standing offence in relation to Article 2.

It criminalises preparatory acts and, in most cases, attempts in relation to a list of offences considered to be typically committed in the framework of a criminal organisation and which are at the same time committed for gain and punishable by imprisonment of a maximum of at least 4 years. The penalty for preparatory acts should be less than the highest and may be less than the lowest limit applicable to the completed offence, which cannot exceed 2 years'

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<sup>9</sup> COM (2013)535 final

imprisonment (unless imprisonment of at least 8 years is envisaged for the completed offence). The national provisions render the aggravating circumstance based on the commission of an offence in a criminal organisation applicable to any criminal offence. The definition of organised crime is applicable for this specific purpose. The SE criminal law system is based on the horizontal liability of legal persons for all offences with the relevant fines and additional penalties. Also, the general rules on jurisdiction cover the principle of territoriality and jurisdiction over nationals for offences committed abroad. Most of the criminal offences are prosecuted *ex officio* without any report or accusation of victims.

### 3. CONCLUSIONS AND NEXT STEPS

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. 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.** 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*. Another example of national standards going beyond the Framework Decision is seen in basic penalty levels that are higher than envisaged by the Framework Decision and, in some cases, are further increased due to e.g. specific conduct or role in the organisation. It should also be noted that the optional provisions, such as mitigating circumstances or penalties for legal persons, have been largely transposed.

**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 the potentially restricted scope of application of the definition of a criminal organisation and issues concerning the correct transposition of Article 5 on the liability of legal persons.

**In line with the European Agenda on Security, which calls for ensuring the better application and implementation of existing EU legal instruments, 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 work will also contribute to the assessment of the necessity and the opportunity to review the Framework Decision.**